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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 MERRILL LYNCH CAPITAL SERVICES, INC.,

4 Plaintiff,

5 v.

09 Civ. 2324 RJS

6 UISA FINANCE, et al.,

7 Defendants.

8 -----x

9 New York, N.Y.  
June 22, 2011  
10 9:05 a.m.

11  
12 Before:

13 HON. RICHARD J. SULLIVAN,

14 District Judge

15  
16 APPEARANCES

17 SIMPSON THACHER & BARTLETT, LLP (NY)

18 Attorneys for plaintiff

19 BY: THOMAS C. RICE, Esq.

PAUL JACOB SIRKIS, Esq.

20 WILLIAM THOMAS RUSSELL, JR., Esq.

Of counsel

21 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

22 Attorneys for defendants

23 BY: RICHARD IRVING WERDER, JR., Esq.

R. BRIAN TIMMONS, Esq.

24 ADAM SETH CASHMAN, Esq.

Of counsel

25 ALSO PRESENT: CRAIG PETERSON, Interpreter

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1 (Trial resumed)

2 (In open court)

3 THE COURT: All right. I got the e-mail from  
4 defendants and then Mr. Rice's follow-up concerning  
5 Mr. Oliveira, so he's out. I'll disregard everything I've ever  
6 read about him -- well, from him.

7 So what are we then going to proceed with today;  
8 Ms. Tamer?

9 MR. RICE: I was going to say -- yes, your Honor. We  
10 have some deposition designations and documents and stuff, but  
11 we thought, since the witnesses were here, we'd just proceed  
12 with the defendant's case, if that was all right.

13 THE COURT: Okay. Mr. Werder, are you ready to go?

14 MR. WERDER: Yes. We are ready to go. I'm not sure  
15 if this is the right time or not, but just for purposes of the  
16 record, I want to preserve our Rule 52(c) motion.

17 THE COURT: Yes. I mean, I guess this is not really  
18 the time because they haven't rested yet; right?

19 MR. WERDER: Well, they have one more witness, so I  
20 just want to make sure that, despite the fact that we were  
21 starting to put on our case, that we weren't giving up that.

22 THE COURT: Certainly you're not giving that up.

23 MR. WERDER: Thank you, your Honor.

24 THE COURT: Anything else we should handle  
25 preliminarily?

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1 MR. WERDER: Not from our perspective, your Honor.

2 THE COURT: All right. Then I guess let's bring in  
3 the witness.

4 MR. WERDER: We call Ana Claudia de Moraes Tamer.

5 THE COURT: Okay.

6 MR. WERDER: I guess preliminarily, your Honor, what I  
7 should note is that both Ms. Tamer and Mr. Possari, as we've  
8 mentioned, are native Portuguese speakers. Ms. Tamer actually  
9 does speak some conversational English, but she was deposed in  
10 Portuguese, and for a matter of this importance, we thought it  
11 would be best for her to testify in Portuguese, and her  
12 translator is here.

13 THE COURT: Bring the translator up and put the  
14 translator right here.

15 MR. WERDER: Mr. Possari doesn't speak any English at  
16 all, so we'll use the translator for him.

17 THE COURT: We'll bring the translator up here.

18 I'm going to first ask the translator to state his  
19 appearance, state and spell his name, and then I'll administer  
20 an oath to him.

21 THE INTERPRETER: Craig Peterson, C-R-A-I-G,  
22 P-E-T-E-R-S-O-N.

23 THE COURT: All right. Mr. Peterson, good morning.  
24 Are you a court-certified interpreter?

25 THE INTERPRETER: I am not court certified.

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1 THE COURT: But have you acted as an interpreter,  
2 English into Portuguese and Portuguese into English?

3 THE INTERPRETER: Yes, your Honor.

4 THE COURT: In court proceedings?

5 THE INTERPRETER: No, your Honor.

6 THE COURT: In depositions?

7 THE INTERPRETER: Yes, your Honor.

8 THE COURT: For how long have you been doing that?

9 THE INTERPRETER: In Portuguese to English, two and a  
10 half years, your Honor.

11 THE COURT: Okay. And vice versa.

12 THE INTERPRETER: Yes.

13 THE COURT: All right. Raise your right hand.

14 (Interpreter sworn)

15 THE COURT: All right. Okay. And if you could raise  
16 your right hand.

17 (Witness sworn)

18 THE COURT: All right. Great. You can have a seat.  
19 If you could just state your name and spell your name for the  
20 record.

21 THE WITNESS: Ana Claudia de Moraes Tamer.

22 THE COURT: Could you spell it.

23 THE WITNESS: Ana Claudia de Moraes --

24 THE INTERPRETER: Interpreter clarification.

25 THE COURT: Yes.

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1 THE WITNESS: Ana Claudia de Moraes. A-N-A,  
2 C-L-A-U-D-I-A, D-E, M-O-R-E-A-E-S.

3 THE COURT: E-A?

4 THE INTERPRETER: M-O-R-A-E-S.

5 THE COURT: And Tamer?

6 THE WITNESS: T-A-M-E-R.

7 THE COURT: All right. Okay. Good morning. Should I  
8 refer to you as Ms. Tamer or as Ms. de Moraes?

9 THE WITNESS: Tamer.

10 THE COURT: Tamer. Tamer? All right. Okay.  
11 Ms. Tamer, good morning. We're going to proceed this morning  
12 with the lawyers asking you questions, so just speak directly  
13 to the lawyers. Keep your voice up, speak into the microphone,  
14 and Mr. Peterson, let me ask you, of course, to keep your voice  
15 up, but you're doing fine.

16 So let's proceed. Mr. Werder?

17 MR. WERDER: Thank you, your Honor.

18 ANA CLAUDIA DE MORAES TAMER,

19 called as a witness by the Defendants,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WERDER:

23 Q. Ms. Tamer, I've handed you a document. Is that your  
24 affidavit of your trial testimony?

25 A. It is.

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Tamer - direct

1 Q. And was that -- were the statements made in there true and  
2 correct, to the best of your knowledge?

3 A. Yes, they were.

4 Q. In paragraph 2 of the document you referred to yourself as  
5 being the controlling shareholder of USINAS Itamarati. Can you  
6 briefly explain how you came to be the controlling shareholder.

7 A. I was there because of my father, who worked there 30 years  
8 in Matarais (ph) and Terras (ph), Mato Grosso.

9 Q. And did your father pass the business to you?

10 A. Yes.

11 Q. And can you just briefly describe your personal educational  
12 background.

13 A. Yes. I studied up until the second year of veterinary  
14 school, then I got married, and I stopped the school.

15 MR. WERDER: I have no further questions at this time,  
16 your Honor.

17 THE COURT: Okay. Mr. Russell, you're going to do the  
18 cross?

19 MR. RUSSELL: Yes, your Honor. With your permission.

20 THE COURT: Good.

21 CROSS-EXAMINATION

22 BY MR. RUSSELL:

23 Q. Good morning, Ms. Tamer.

24 A. Good morning.

25 Q. You told us this morning that you're the controlling

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Tamer - cross

1 shareholder of USINAS Itamarati. Were you the controlling  
2 shareholder of USINAS Itamarati in 2007, 2008 as well?

3 A. Yes.

4 Q. What does it mean to be the controlling shareholder?

5 A. It means a lot of responsibility, means goodwill, and it  
6 means worries.

7 Q. Does anyone else other than yourself have an ownership  
8 interest in USINAS Itamarati?

9 A. No.

10 Q. Do you own the shares of USINAS Itamarati directly yourself  
11 or through some other company or entity?

12 A. I believe that the principal company is through Itamarati  
13 and that there exists other entities under that, but the lawyer  
14 could explain that better to you.

15 Q. Do you know whether you own the shares of Itamarati, USINAS  
16 Itamarati directly or through this other company that you just  
17 mentioned?

18 A. Through the -- the other companies that are inside this  
19 one.

20 Q. Through what companies? What are their names?

21 A. No, I do not know the names of all of them and how they are  
22 composed. I know the two principal ones, but after that, I  
23 don't know the composition of the rest and I'm not capable of  
24 explaining them.

25 Q. Are those details you rely on Mr. Sergio Spinelli for?

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Tamer - cross

1 THE INTERPRETER: Interpreter would ask for that to be  
2 repeated.

3 MR. RUSSELL: Sure.

4 Q. Are those details the types of things you rely on  
5 Mr. Sergio Spinelli for?

6 A. Yes.

7 Q. And he's a partner of the firm of Mattos Filho?

8 A. Yes.

9 Q. And they are the outside law firm for USINAS Itamarati and  
10 the other companies you control?

11 A. He's my complete and total lawyer.

12 Q. Now let's talk for a minute about the company called UISA  
13 Finance. You mentioned UISA Finance in your affidavit; is that  
14 right?

15 A. That's true.

16 Q. Do you have an ownership interest in UISA Finance?

17 A. I don't know the composition of the other companies. What  
18 I do know about UISA Finance is that they made an agreement  
19 with Merrill Lynch and Itamarati to make a loan, but I don't  
20 know the details.

21 Q. Do you know who the direct owner of UISA Finance is?

22 A. No.

23 Q. Do you know if it's owned by USINAS Itamarati or some other  
24 company?

25 A. No.



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Tamer - cross

1 Q. You don't know?

2 A. No.

3 Q. What is the business of UISA Finance?

4 A. As I said before, I don't know the details of UISA Finance.  
5 I really don't know.

6 THE COURT: Who does?

7 THE WITNESS: Mr. Possari maybe, the lawyer.

8 Q. Do you know if UISA Finance engages in any business?

9 A. No, I don't know.

10 Q. Do you know if UISA Finance has any assets?

11 A. No, I don't know.

12 Q. And I think a few minutes ago you mentioned that you do  
13 know that UISA Finance entered into some loans involving  
14 Itamarati and Merrill Lynch; is that correct?

15 A. Yes.

16 Q. Do you know, has UISA Finance entered into, ever, any other  
17 transactions with anyone else?

18 A. No, I don't know.

19 Q. You told us Mr. Possari would know more about UISA Finance.  
20 Do you know who makes decisions on behalf of UISA Finance?

21 A. No. That should be talked about with Mr. Possari.

22 Q. Let's get back to USINAS Itamarati for a minute. With  
23 respect to USINAS Itamarati, it's you, Mr. Edezio Oliveira, and  
24 Mr. Sergio Spinelli who make the decisions on behalf of USINAS  
25 Itamarati; is that correct?

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Tamer - cross

1 MR. WERDER: I'm going to object. It lacks  
2 specificity on the time period here, your Honor.

3 THE COURT: All right. Sustained. Rephrase the  
4 question.

5 MR. RUSSELL: Sure.

6 Q. Ms. Tamer, at the current time, today, it's you, Mr. Edezio  
7 Oliveira, and Mr. Sergio Spinelli, who make decisions on behalf  
8 of USINAS Itamarati; right?

9 A. I always have the custom of speaking with Edezio or Sergio  
10 or sometimes my father if I need help in making decisions.

11 Q. But when it comes time to actually making the decisions on  
12 behalf of USINAS Itamarati, it's you, Mr. Oliveira, and  
13 Mr. Spinelli; is that correct?

14 A. Yes, I trade ideas with them before making the decision.

15 Q. And this was true in 2007, 2008 as well; isn't that right?

16 A. Yes.

17 Q. And you told us Mr. Spinelli is your lawyer, but you also  
18 rely on him for business advice as well as legal advice; right?

19 A. Yes, it's true. We do talk about business. We talk about  
20 like the price of sugar or what could happen in the market.

21 Q. And as to Mr. Oliveira, you rely on Mr. Oliveira to keep  
22 you informed of important information concerning USINAS  
23 Itamarati; right?

24 A. That's true.

25 Q. And Mr. Oliveira functions as the CEO of USINAS Itamarati,

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Tamer - cross

1 doesn't he?

2 A. Yes, the counselor.

3 Q. He is in fact the CEO; is that right?

4 A. I don't really know the difference between the CEO and an  
5 adviser. I would say that in my case he's really more an  
6 adviser to me.

7 Q. Ms. Tamer, do you recall back in February of this year I  
8 took your deposition?

9 A. Yes, of course.

10 Q. In Mr. Werder's offices here in New York?

11 A. Yes, of course.

12 Q. And you understood that your testimony was under oath?

13 A. Yes, of course.

14 Q. And you answered the questions truthfully and to the best  
15 of your ability?

16 A. Yes.

17 MR. RUSSELL: Your Honor, I've got a copy of her  
18 transcript for your Honor and for the witness. May I approach?

19 THE COURT: Yes.

20 Q. Ms. Tamer, would you turn to page 32 of the transcript to  
21 your deposition. And I'd like you to focus starting on  
22 line 18.

23 A. Help me here because -- page 32?

24 Q. Yes, ma'am.

25 A. 18.

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Tamer - cross

1 Q. Ms. Tamer, it's -- the page numbers there are I think four  
2 pages of transcript on each page of the document, and it would  
3 be the page number in the upper right-hand corner of each of  
4 the small pages on the physical page.

5 A. Okay. I'm sorry.

6 Q. Are you on page 32?

7 A. Mm-hmm.

8 Q. And do you see line 18? Do you recall being asked this  
9 question and giving this answer:

10 "Q. What is Mr. Oliveira's title or position at  
11 USINAS Itamarati?

12 "A. He is USINAS's CEO. He is the one who does all  
13 the things at USINAS."

14 Do you recall giving that answer?

15 A. Yes.

16 Q. And it was true at the time?

17 A. Yes.

18 Q. And it's true today?

19 A. I would like to say that I have difficulty in choosing  
20 CEOs, officers, or directors between English and Portuguese,  
21 and this has been a little difficult as regards to my  
22 testimony.

23 Q. But you believe your testimony at the time was correct; is  
24 that right?

25 A. Yes, of course.

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Tamer - cross

1 Q. Now you, Mr. Oliveira, and Mr. Spinelli act as what you  
2 called an executive committee; is that right?

3 MR. WERDER: Objection to lack of specificity on time.  
4 Are you talking currently, Mr. Russell?

5 THE COURT: Time period.

6 Q. Ms. Tamer, at the present time do you, Mr. Oliveira, and  
7 Mr. Spinelli act as what you had called an executive committee;  
8 is that right?

9 A. What I don't understand is "executive committee."

10 Q. Sure. Ms. Tamer, do you still have your deposition in  
11 front of you?

12 A. Yes, mm-hmm.

13 Q. Would you turn to page 41 and 42. And starting on line 23  
14 on page 41, do you recall being asked this question and giving  
15 this answer:

16 "Q. Sure. My question was whether the board met in  
17 person, and I think you said, 'No, but if there's an important  
18 document to be signed, they call me.' Who calls you if there's  
19 an important document to be signed?

20 "A. When you talk about board of directors, I'm  
21 getting confused, because there are two. I don't know if  
22 you're talking about the board of directors whose people are  
23 Sergio, I, and Edezio, or are you talking about board of  
24 directors, I, Julio and Linda."

25 And you actually made a change to the transcript and

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Tamer - cross

1 replaced the "board of directors" in line 7 with the phrase  
2 "executive committee." Do you see that?

3 A. Mm-hmm. You were asking about the name, like if I talk  
4 with Edezio and Spinelli, if it's an executive committee?

5 Q. My question is: Do you recall giving that testimony under  
6 oath back in February, Ms. Tamer?

7 A. Yes, yes.

8 Q. And do you recall after that making a change to your  
9 transcript to refer to yourself, Mr. Spinelli, and Mr. Oliveira  
10 as the executive committee?

11 A. Yesterday, conversing with Rick, my lawyer, I discovered  
12 that I have a great difficulty with distinguishing between  
13 "executive committee" or "committee of directors," and that  
14 could have been the reason of my confusion, not because of  
15 speaking with bad faith but because of really being confused.

16 Q. Ms. Tamer, my question, though, is: You gave this  
17 testimony in February and then you had an opportunity to  
18 correct your transcript, and you corrected your transcript --  
19 this is something you did -- to refer to yourself,  
20 Mr. Oliveira, and Mr. Spinelli as an executive committee; is  
21 that correct?

22 A. True.

23 Q. And this arrangement has functioned with Mr. Spinelli,  
24 Mr. Oliveira -- the three of you functioned in this way in 2007  
25 and 2008 as well; is that right?

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Tamer - cross

1 A. Yes.

2 Q. And when the three of you on the executive committee made a  
3 decision, who would then communicate that decision to the  
4 management of USINAS Itamarati?

5 A. Edezio.

6 Q. That's Mr. Oliveira?

7 A. Yes, uh-huh, yes.

8 Q. That's not something you would do yourself?

9 A. No. Not necessarily.

10 Q. Generally you dealt with Mr. Oliveira and Mr. Oliveira  
11 would deal with the rest of the management at USINAS Itamarati?

12 A. Yes.

13 Q. Now let's talk for a moment about the board of directors of  
14 USINAS Itamarati. Back in 2007 and 2008 USINAS Itamarati  
15 officially had a board of directors; am I right?

16 A. True.

17 Q. And you were a member of the board?

18 A. Yes.

19 Q. And you were actually chair of the board; is that right?

20 A. Yes.

21 Q. And one of the other board members was Mr. Julio Tamer; is  
22 that right?

23 A. Yes. True.

24 Q. And he's your former husband; am I right?

25 A. Yes.

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Tamer - cross

1 Q. And then the last member of the board in 2007 and 2008 was  
2 Ms. Linda Bogosian Tamer; is that right?

3 THE INTERPRETER: Excuse me. Could the interpreter  
4 have the name repeated, please.

5 MR. RUSSELL: Sure. Linda Bogosian Tamer.

6 A. Mm-hmm, right.

7 Q. And she's Julio Tamer's mother; right?

8 A. Yes.

9 Q. So your former mother-in-law?

10 A. Mm-hmm.

11 THE COURT: You have to say yes. You can't say  
12 mm-hmm. The court reporter can't get it.

13 A. Yes.

14 MR. RUSSELL: Thank you.

15 Q. And Julio Tamer and Linda Bogosian Tamer, they were not  
16 involved in the day-to-day business or operations of USINAS  
17 Itamarati, were they?

18 A. True.

19 Q. Correct that they weren't; right?

20 A. True. From day to day, no.

21 Q. And this board of directors did not actually hold formal,  
22 in-person meetings, did it?

23 A. Formal, no, but every time my mother-in-law, who is 66  
24 years of age, had to sign a document, it was explained to her  
25 so that she could understand the risk involved. It was



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Tamer - cross

1 explained to her.

2 Q. Explained to her by you or Mr. Oliveira or someone else?

3 A. By me.

4 Q. Now but when you met with Mr. Julio Tamer and your former  
5 mother-in-law Ms. Linda Bogosian Tamer, you talked about family  
6 issues, not business; right?

7 A. Yes, we talked about family matters, but if there was a  
8 document that she had to sign that she needed to be clarified,  
9 we would clarify it for her.

10 Q. But in terms of actually discussing business issues and  
11 making decisions, that's something that you did in consultation  
12 with Mr. Oliveira and Mr. Spinelli; right?

13 A. Yes.

14 Q. And after you reached a decision with Mr. Oliveira and  
15 Mr. Spinelli, you wouldn't then go actually discuss that  
16 decision with Julio Tamer and Linda Tamer and make a decision  
17 with the two of them, would you?

18 A. True. Not in all business matters, but if there was  
19 something that had to be signed, yes. Sometimes yes, sometimes  
20 no. At times.

21 Q. Did -- Ms. Tamer, could you turn to page 39 of your  
22 deposition transcript. Do you recall being asked these  
23 questions and giving these answers, and I'm starting on line 4:

24 "Q. Let me clarify. When I refer to the board of  
25 directors, I'm referring to the board of directors of USINAS

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Tamer - cross

1 Itamarati, which I think you told us consists of you, Julio  
2 Tamer, and Linda Tamer.

3 "A. Yes.

4 "Q. My question is: Does the board meet regularly  
5 every month, every quarter, once a year?

6 "A. Well, we get together, yes. We meet. Not always  
7 to talk about USINAS because it is about family."

8 A. Yes.

9 Q. "Q. My question then, meeting as a board of directors to  
10 discuss the business of USINAS Itamarati, how often do you meet  
11 as a board of directors to discuss the business of USINAS  
12 Itamarati?

13 "A. No, they do not discuss the company's issues with  
14 me. It's very rare for that to happen.

15 "Q. Do you ever have formal board meetings where the  
16 three of you either sit down or get on the phone and say, 'We  
17 are meeting as a board of directors of USINAS Itamarati'?

18 "A. It is Edezio who does all that. All these  
19 companies, negotiations, and meetings are done by Edezio. Then  
20 he comes to me and discuss things -- discusses things with me,  
21 and I go to Spinelli and discuss them with Spinelli.

22 "Q. Does Mr. Oliveira ever come to you with an issue  
23 and then you go and meet with Julio Tamer and Linda Tamer to  
24 discuss it and come to a decision?

25 "A. No."

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Tamer - cross

1 That testimony was correct when you gave it?

2 A. Yes.

3 Q. Now you mentioned that sometimes your former mother-in-law  
4 or your former husband needed to sign documents. If there was  
5 a formal document that needed to be signed by the board, is it  
6 correct that you wouldn't have a real meeting, somebody from  
7 the legal department would sign the draft authorization and you  
8 and the other board members would just sign it; is that right?

9 A. I didn't understand.

10 Q. Sure. You mentioned before there were times when you  
11 needed to get your mother-in-law to sign the document as a  
12 member of the board. Do you recall that testimony?

13 A. Yes.

14 Q. And when that happened, somebody from the USINAS Itamarati  
15 legal department would draft up an authorization and you and  
16 your former husband and former mother-in-law would just sign  
17 it; is that right?

18 A. Yes, and if my mother-in-law had any questions, how should  
19 she write this or that, that was rare, but I would clarify it  
20 for her.

21 Q. She didn't really have to write anything to do the  
22 authorization, she just had to sign it; is that right?

23 A. Yes.

24 Q. Now the board of directors of USINAS Itamarati actually was  
25 dissolved in May of 2009; right?

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Tamer - cross

1 A. Yes.

2 Q. Who made the decision to dissolve the board of directors?

3 A. Mr. Edezio.

4 Q. Do you know why Mr. Edezio decided to dissolve the board of  
5 directors?

6 THE COURT: Mr. Edezio is Oliveira; right?

7 MR. RUSSELL: That's my understanding, yes, your  
8 Honor.

9 THE COURT: Right. Let's use the proper name.

10 THE INTERPRETER: Judge, just so the interpreter can  
11 clarify, by proper name, meaning last name?

12 THE COURT: Yes.

13 Q. I'm sorry. Do you know why Mr. Oliveira decided to  
14 dissolve the board of directors of USINAS Itamarati?

15 A. He said it was just bureaucratic reasons; that's all.

16 Q. So now that there's no board, you, Mr. Oliveira, and  
17 Mr. Spinelli continue to make decisions for USINAS Itamarati;  
18 is that right?

19 A. I do get counsel from Mr. Oliveira and Mr. Spinelli, but  
20 the final decisions are mine.

21 Q. Now in your testimony earlier and in your affidavit you  
22 mentioned certain loan transactions between Merrill Lynch and  
23 UISA Finance. Do you recall that?

24 A. Right.

25 Q. You don't know, do you, whether USINAS Itamarati guaranteed

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Tamer - cross

1 UISA Finance's obligations to Merrill Lynch under those loans,  
2 do you?

3 A. Yes, yes. I know that the loan that we received from  
4 Merrill Lynch has a guaranty to be paid.

5 Q. But my question is: You didn't understand that there was a  
6 guaranty from USINAS Itamarati, did you?

7 A. Yes. Again, I'm confused again with the word "guaranty"  
8 and "collateral," but I understand better now. The words in  
9 English, they kind of mess me up a little bit.

10 Q. Well, isn't it true that Mr. Oliveira discussed these loans  
11 with you but he never told you that Itamarati was providing a  
12 guaranty of the obligations of UISA Finance?

13 A. Speak slowly, please.

14 He talked to me about the loans, yes. He talked to me  
15 about the loans, but my understanding of "guaranty" and  
16 "collateral" in your language was difficult. Now it has been  
17 clarified. So there was no collateral but there was a  
18 guaranty.

19 Q. Okay. Ms. Tamer, could you turn back to your deposition  
20 transcript, please.

21 Starting on page 50, I'm going to start on line 9. Do  
22 you recall being asked these questions and giving these  
23 answers:

24 "Q. Let me rephrase the question. Are you aware that  
25 there were loans from a Merrill Lynch company to UISA Finance

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Tamer - cross

1 as well?

2 "A. Yes. Sure.

3 "Q. Why were some loans made to USINAS Itamarati and  
4 others to UISA Finance?

5 "A. I have no idea whatsoever.

6 "Q. Do you recall which loans came first, the loans  
7 to USINAS Itamarati or the loans to UISA Finance?

8 "A. No.

9 "Q. When the loans are made to UISA Finance, did  
10 USINAS Itamarati guaranty UISA Finance's obligations?

11 "A. I don't know.

12 "Q. Did you ever -- did anyone ever discuss with you  
13 the fact that USINAS Itamarati would have to guaranty UISA  
14 Finance's obligations under a loan from a Merrill Lynch  
15 company?

16 "A. No.

17 "Q. No one ever discussed that with you?

18 "A. No." Do you recall giving that testimony?

19 A. Yes. What changed from then until now is that back then I  
20 had a complete difficulty understanding words like "guaranty,"  
21 "loan," "collateral," "board of directors," in English. From  
22 then until now my understanding has been clarified. I  
23 understand better now.

24 Q. Sure. But you had an opportunity to correct your  
25 transcript, and in fact we saw that in a previous section we

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Tamer - cross

1 read, you corrected the phrase "board of directors" to put in  
2 the phrase "executive committee." Is that right?

3 A. Yes.

4 Q. And you didn't make any changes here, did you?

5 A. Here where? Which one? This one? This one?

6 Q. The testimony I just read on pages 50 and 51, you didn't  
7 make any changes there, did you?

8 A. True.

9 MR. RUSSELL: May I approach the witness, your Honor?

10 THE COURT: Yes.

11 Q. Ms. Tamer, I've handed you your errata sheet for your  
12 deposition transcript. Is that your signature at the bottom of  
13 this page?

14 A. Yes.

15 Q. And when you signed this document in March, you understood  
16 that these were changes you wanted to make to your deposition  
17 transcript?

18 A. True.

19 Q. And if you look on page number 54, lines 12 and 17, you see  
20 those columns on the left?

21 A. Yes.

22 Q. And those are two instances where you wanted to make the  
23 change and did make the change of the word "guaranty" to the  
24 word "collateral." Is that right?

25 A. True. (Continued on next page)

16MJMLC2

Tamer - cross

1 BY MR. RUSSELL:

2 Q. But you didn't make that change to Page 50 and 51, did you?

3 A. I don't know what he's trying to say. Excuse me. I got  
4 lost.

5 Q. Sure. We see from your errata sheet there were other  
6 places in your deposition transcript where you made a  
7 correction and changed the word "guaranty" to the word  
8 "collateral." Do you see that in your errata sheet?

9 A. This right here?

10 Q. Yes, ma'am.

11 A. Yes.

12 Q. My question then is: But you did not make that change on  
13 pages 50 or 51 of your deposition transcript, did you?

14 A. Even if I made the changes, it doesn't mean that I still  
15 don't have difficulty with some of those terms. I still have  
16 some difficulty with some of those terms.

17 Q. Sure. But you were able to make that correction in certain  
18 parts of your transcript, but did not make it on 50 or 51. Is  
19 that correct?

20 MR. WERDER: Objection; argumentative, your Honor.

21 THE COURT: Overruled.

22 A. I didn't understand.

23 MR. RUSSELL: I'll move on?

24 THE COURT: Please move on.

25 BY MR. RUSSELL:



16MJMLC2

Tamer - cross

1 Q. Now, getting back --

2 THE COURT: Let me ask you a question. The question  
3 put to you in your deposition was:

4 "Q When were the loans were made to UISA Finance, guaranty  
5 UISA Finance's obligations?

6 And you answered: "I don't know."

7 Are you saying today you did know?

8 THE WITNESS: I did not know. I was informed later  
9 after this right here and now I know better.

10 THE COURT: But at the time of the loan, did you know  
11 that USINAS Itamarati was guaranteeing UISA Finance's  
12 obligation?

13 THE WITNESS: No, I did not know.

14 THE COURT: All right. Let's proceed.

15 BY MR. RUSSELL:

16 Q. Getting back to the loans, Ms. Tamer, you never discussed  
17 these loans with Julio Tamer or Linda Bogosian, did you?

18 A. Sure.

19 Q. And there was no board meetings where the three of you  
20 actually approved the loans?

21 A. No.

22 Q. And no board meetings where the three of you actually  
23 approved a guaranty under the loans, right?

24 A. What was that? Excuse me? Could you repeat?

25 Q. There was no board meeting where the three of you actually

16MJMLC2

Tamer - cross

1 approved the guaranty of the loans because you didn't even know  
2 of the guaranty at the time, right?

3 A. True.

4 Q. Now, if Mr. Olivera actually had discussed with you the  
5 fact that the loans from Merrill Lynch to UISA Finance would  
6 require a guaranty by Itamarati, you would have agreed to that,  
7 right?

8 A. I would have wanted to know more details about the guaranty  
9 and if we were in agreement, yes.

10 Q. In your affidavit you also mentioned the derivative  
11 transaction of Merrill Lynch. Do you recall that?

12 A. Yes.

13 Q. Now, if Mr. Olivera and Mr. Spinelli had come to you and  
14 told you about the derivative transaction and recommended to  
15 you that you approve a guaranty for either USINAS Itamarati,  
16 UISA Finance's obligations under the derivative, that is  
17 something you would have agreed to, too, right?

18 MR. WERDER: Objection, your Honor; hypothetical.

19 THE COURT: Overruled.

20 A. That's a difficult question to respond to because I would  
21 have to be at that time at that moment in that situation. If  
22 it was something good for the company, maybe I would do it, but  
23 it is difficult to respond now especially since I didn't even  
24 know what derivatives were until today.

25 BY MR. RUSSELL:

16MJMLC2

Tamer - cross

1 Q. But you didn't have a problem answering that question back  
2 in February, did you, Ms. Tamer?

3 A. Since I don't have it today, I just finished explaining it  
4 to you.

5 Q. Ms. Tamer, could you turn back to your deposition  
6 transcript, and in particular Page 73, please, starting on Line  
7 22 on Page 73, do you recall being asked these questions and  
8 giving these answers:

9 "Q You trusted Mr. Olivera's judgment?

10 "A I did.

11 "Q If he had brought the derivative transaction to your  
12 attention at the time they did it in April, would you have  
13 approved it?"

14 There was an objection Mr. Werder.

15 "A If there had been a meeting with Edezio Spinelli, Spinelli  
16 would have said yes, yes."

17 Then you actually made a change there and said, "and  
18 Spinelli would have said yes, then yes."

19 "Q If you had been told it involved a guaranty by Itamarati,  
20 would you have approved that?"

21 Another objection from Mr. Werder.

22 "A We would have sat and discussed the matter and I would have  
23 consulted with Spinelli, and we would reach a consensus, they  
24 extreme trust in me, so the answer is yes."

25 Again you had an opportunity to review your transcript

16MJMLC2

Tamer - cross

1 and you changed the answer, if the answer is yes if Edezio  
2 Spinelli had recommended it."

3 Do you recall those questions, giving those answers  
4 and subsequently making the corrections?

5 A. Yes, but that's just what I finished saying to you that if  
6 we came to an agreement and it was going to be something good  
7 for the company, that I would have done it. I thought that's  
8 exactly what I told you. I don't know.

9 MR. RUSSELL: Your Honor, may I have one moment to  
10 consult with co-counsel. (Pause) Your Honor, I have no  
11 further questions.

12 THE COURT: Mr. Werder, and then I'll have a couple of  
13 questions.

14 MR. WERDER: Did your Honor want to ask --

15 THE COURT: No. You can go first.

16 REDIRECT EXAMINATION

17 BY MR. WERDER:

18 Q. Ms. Tamer, let me ask you to take a look at Paragraph 7 of  
19 your trial affidavit. Do you see there is a reference there to  
20 a forward resolution?

21 A. Ah-huh, yes.

22 MR. WERDER: I've handed the witness, your Honor,  
23 Exhibit DX 282.

24 BY MR. WERDER:

25 Q. Can you tell me, Ms. Tamer, what Exhibit 282 is. Let me

16MJMLC2

Tamer - redirect

1 ask you if that is your signature on Exhibit 282?

2 A. Just a moment. I'm trying to read.

3 Q. Thank you.

4 A. (Pause) Yes. What exactly did you want to know?

5 Q. Can you tell the court what this document is?

6 A. It's a formal declaration for authority to guaranty the  
7 authorized parties.

8 Q. When did you sign that document, Ms. Tamer?

9 A. In 2007.

10 Q. Is there a particular date in 2007 that you signed it?

11 A. Here it says September of 2007. If I wasn't to read this,  
12 I wouldn't remember the particular date, but reading it, it  
13 says September 2007.

14 THE COURT: Where is your signature?

15 THE WITNESS: (Indicating)

16 THE COURT: Are you talking about her affidavit or are  
17 you talking about the exhibit?

18 MR. WERDER: I am talking about exhibit.

19 THE COURT: The witness is referring to her affidavit.  
20 Point to the exhibit and ask her where her signature is on the  
21 exhibit. (Pause) This is what you gave me.

22 MR. WERDER: I am sorry. I actually thought I handed  
23 her the one that had her signature. I am sorry.

24 THE COURT: Are you handing her a different document?

25 MR. WERDER: Yes, I'll hand her a different document.

16MJMLC2

Tamer - redirect

1 BY MR. WERDER:

2 Q. I am handing you Defendant's Exhibit 53, Ms. Tamer.

3 A. Okay.

4 Q. What does that document state?

5 A. It is an act of the meeting of directors.

6 Q. What meeting of directors is that?

7 A. Authorization for the board to sign.

8 THE INTERPRETER: Interpreter error?

9 A. Authority for the director to sign the name of the company,  
10 guaranteeing the obligations of UISA Finance, the loan and  
11 guaranty agreement to be made with UISA Finance and Merrill  
12 Lynch Credit Products.

13 Q. Does your signature appear on that document, Ms. Tamer?

14 A. Yes.

15 Q. Is that your signature on the document?

16 A. Yes.

17 Q. When did you sign this document?

18 A. 9th of November 2007.

19 MR. WERDER: No further questions, your Honor.

20 THE COURT: I've got a couple. A moment ago I asked  
21 you whether you knew that Itamarati was asked to sign a  
22 guaranty for the loan to UISA. Do you recall that?

23 THE WITNESS: Ah-huh.

24 THE COURT: You do remember that?

25 THE WITNESS: Yes, yes.

16MJMLC2

Tamer - redirect

1 THE COURT: And you said "no"?

2 THE WITNESS: Yes.

3 THE COURT: Is that correct, that was your testimony?

4 THE WITNESS: Yes, but I confused "collateral" with  
5 "guaranty." That is why I said no, because I was confused.

6 THE COURT: I didn't ask you that. I asked you a  
7 moment ago if you knew in 2007 that Itamarati was being asked  
8 to sign a guaranty for the UISA loan. Do you recall I asked  
9 you that?

10 THE WITNESS: I remember.

11 THE COURT: And you said no, you did not know?

12 THE WITNESS: Yes.

13 THE COURT: That's correct, you didn't know in 2007  
14 that Itamarati was being asked to sign a guaranty, correct?

15 THE WITNESS: I didn't remember. No, I didn't know.

16 THE COURT: In your declaration, in your affidavit,  
17 you stated, at Paragraph 7, "When Merrill Lynch lent funds to  
18 UISA Finance in September 2007, I was informed that Merrill  
19 Lynch would require Itamarati's board of directors to provide a  
20 guaranty of UISA's Finance's obligations under the loan."

21 Do you see that?

22 THE WITNESS: Yes.

23 THE COURT: Do you not see the conflict between what  
24 you answered to me a moment ago and what is in your affidavit?

25 THE WITNESS: I see a conflict due to a confusion of

16MJMLC2

Tamer - redirect

1 terms and understanding.

2 THE COURT: Did you understand in September and then  
3 again in November of 2007 that Itamarati was being asked to  
4 sign a guaranty for the obligations of UISA under a loan  
5 agreement?

6 THE WITNESS: Yes, after I understood the term  
7 "guaranty" because I had confused guaranty and collateral.

8 THE COURT: I asked you "guaranty" about five minutes  
9 ago and you answered no, you did not know. So I want to know,  
10 did you know or did you not know in 2007 that Itamarati was  
11 being asked to sign a guaranty?

12 Translate that.

13 THE WITNESS: No, I didn't know specifically what  
14 guaranty, no.

15 THE COURT: So why did you sign this affidavit which  
16 is inconsistent with what you just testified to under oath?

17 THE WITNESS: I don't remember. That was in 2007 and  
18 I trusted in the way that Edezio had taken care of things with  
19 Merrill Lynch.

20 THE COURT: Why did you sign this document that says  
21 you knew, you were informed that Merrill Lynch would require  
22 Itamarati's board of directors to provide a guaranty?

23 THE WITNESS: Because I understood the difference  
24 between collateral and guaranty later. It was a confusion on  
25 my part. It wasn't said in bad faith.



16MJMLC2

Tamer - redirect

1 THE COURT: Did you discuss the loan and the guaranty  
2 that was being asked with anyone in 2007, the Fall of 2007?

3 THE WITNESS: Yes, I talked with Edezio, Spinelli and  
4 Richard Rainer.

5 THE COURT: What did they tell you about the guaranty  
6 that was being required of Itamarati?

7 THE WITNESS: Now I can respond clearly. They told me  
8 a guaranty was a vow, a promise with respect to the debt, but  
9 it was not involving a collateral. I didn't understand that  
10 before. I understand that now.

11 THE COURT: What do you understand now?

12 THE WITNESS: That it is a guaranty to a debt that has  
13 to be paid but that it didn't have anything to do with  
14 collateral.

15 THE COURT: I didn't ask you anything about  
16 collateral. I am asking you about the guaranty. You  
17 understood or you didn't understand in the Fall of 2007 that  
18 Itamarati was being asked to guaranty the obligations of UISA  
19 Finance?

20 THE WITNESS: I understood.

21 THE COURT: Okay. And so two minutes ago you told me  
22 you didn't understand. Now you tell me you understood?

23 THE WITNESS: I didn't understand the terms, some of  
24 the terms in English. That's what I am trying to explain.

25 THE COURT: That's your testimony under oath, subject

16MJMLC2

Tamer - redirect

1 to the penalties for perjury, that is your testimony?

2 THE WITNESS: Yes, I understood. I don't know what to  
3 say.

4 THE COURT: A moment ago you said you didn't  
5 understand. I get to make credibility findings, Mr. Werder,  
6 you understand that? I am the finder of fact here?

7 MR. WERDER: Understood, your Honor.

8 THE COURT: Yes. That is not a question for you.  
9 Anything further?

10 MR. RUSSELL: Not from me, your Honor.

11 MR. WERDER: No, your Honor.

12 THE COURT: You may step down.

13 (Witness excused)

14 THE COURT: Your next witness, Mr. Werder?

15 MR. WERDER: Your Honor, our next witness is going to  
16 be Mr. Possari. May we have a five-minute break before we have  
17 him up?

18 THE COURT: Yes.

19 MR. WERDER: May we have a sidebar before Mr. Possari  
20 comes? I don't want to have him hear.

21 THE COURT: Before or after the break?

22 MR. WERDER: Before the break, your Honor.

23 (At the sidebar)

24 MR. WERDER: I don't know if the translator can help  
25 with this at all, but I will let Mr. Timmons explain there is a

16MJMLC2

Tamer - redirect

1 translation difficulty, I believe, that may be having some  
2 impact on this.

3 MR. TIMMONS: Your Honor, word (Portuguese) in  
4 Portuguese has two meanings. One is guaranty and the other  
5 meaning is collateral.

6 THE COURT: You're going with this one? This is what  
7 you're going to do? There are two things I won't tolerate in  
8 my courtroom: One is perjury and the other are lawyers who  
9 basically draft a statement for somebody and have them sign the  
10 way the board of directors did in this case, so think about it  
11 and we can take this up again at the sidebar. You're going to  
12 try to tell me this is a translation problem!

13 (Recess)

14 THE COURT: Have a seat. Next witness.

15 MR. TIMMONS: Your Honor, our next witness is  
16 Mr. Ernesto Possari.

17 THE COURT: All right. Mr.  
18 ERNESTO VALDOMIRO POSSARI,

19 called as a witness by the Defendant,  
20 having been duly sworn, testified as follows:

21 THE COURT: May we have the interpreter state and  
22 spell her name, please.

23 THE INTERPRETER: Maria, M A R I A, D E L I M A.

24 THE COURT: Ms. Delima, good morning.

25 Ms. Delima, you are a court-certified interpreter?

16MJMLC2

Possari - direct

1 THE INTERPRETER: No, I am not.

2 THE COURT: Have you interpreted in court before?

3 THE INTERPRETER: Yes.

4 THE COURT: On how many occasions?

5 THE INTERPRETER: Two.

6 THE COURT: Two? Do you also provide translation  
7 services and interpreting services in depositions and other  
8 legal matters?

9 THE INTERPRETER: In depositions.

10 THE COURT: Okay. We'll have you take an interpreter  
11 oath to have you faithfully and truthfully interpret these  
12 proceedings in Portuguese and English.

13 (The Portuguese Interpreter, Maria Delima, was duly  
14 sworn)

15 THE COURT: All right. Okay. Mr. Possari, is that  
16 the spelling of your name?

17 THE WITNESS: Yes.

18 THE COURT: The last letter is I or E?

19 THE WITNESS: E, Possari, E.

20 THE INTERPRETER: E.

21 THE COURT: E?

22 MR. TIMMONS: Your Honor, E is I. I believe it was a  
23 translation error.

24 THE INTERPRETER: Pardon me.

25 THE COURT: Mr. Possari, just keep your voice up.

16MJMLC2

Possari - direct

1 Actually, would you look below your seat, is there something  
2 like this that fell off?

3 Never mind. We'll find it.

4 THE INTERPRETER: Here it is.

5 THE COURT: The last witness brushed against it.

6 Keep your voice up. Let me ask the interpreter to do  
7 the same and just answer the questions put to you by the  
8 lawyers.

9 DIRECT EXAMINATION

10 BY MR. TIMMONS:

11 Q. Good morning, Mr. Possari. What is your current position  
12 with Itamarati?

13 A. I'm a director -- officer.

14 Q. What position did you hold at Itamarati during the to 2008  
15 time period?

16 A. I was a director of law.

17 MR. TIMMONS: Your Honor, I am approaching the witness  
18 with the trial affidavit.

19 THE COURT: Yes.

20 (Pause)

21 BY MR. TIMMONS:

22 Q. Mr. Possari, I've just handed you a document that is  
23 entitled, "Affidavit of Ernesto Possari." Do you have that  
24 document in front of you?

25 A. Yes, I do.

16MJMLC2

Possari - direct

1 Q. Would you turn to the last page of that document, please.

2 Is that your signature?

3 A. Yes, it is.

4 Q. Do you speak or understand any English, Mr. Possari?

5 A. No, I do not.

6 Q. Was your trial affidavit translated for you orally into  
7 Portuguese before you signed it?

8 A. Yes, it was.

9 Q. In preparing to testify here today, did you ask one of your  
10 co-workers to also prepare a written translation of this  
11 document for you?

12 A. Yes, I did.

13 MR. TIMMONS: For the record, I have put that document  
14 in front of the witness. It has been marked as Defense Exhibit  
15 300. I have handed it up to your Honor and given one to  
16 plaintiff's counsel. We don't intend to offer it into  
17 evidence. I just wanted to mark it as an exhibit.

18 THE COURT: All right. Any objection to this coming  
19 in as evidence?

20 MR. RICE: Your Honor, it is not certified, but in all  
21 honesty, I don't object.

22 THE COURT: All right. I'll take it, Defense Exhibit  
23 300 is received.

24 (Defendant Exhibit 300 received in evidence)

25 MR. TIMMONS: One other point, for the record, your

16MJMLC2

Possari - direct

1 Honor, we noticed that there is a typo in Mr. Possari's  
2 declaration. In Paragraph 11 there is a reference to --

3 THE COURT: Paragraph 12.

4 MR. TIMMONS: Sorry, Paragraph 12 there is a reference  
5 to Defendant's Exhibit 3, and that is supposed to be 4. I can  
6 either correct that with the witness --

7 THE COURT: Make sure the witness agrees. It is his  
8 statement.

9 BY MR. TIMMONS:

10 Q. Mr. Possari, calling your attention to Paragraph 12 of your  
11 trial affidavit, do you see in the first sentence of that  
12 paragraph that reads, "I understand there is a document that  
13 was signed by Mr. Moraes that contains an opinion that a.  
14 Certain guaranty is enforceable," and there is a reference to  
15 the letters DX and the No. 3. Do you see that?

16 A. You are asking?

17 Q. I am just asking if you see that reference?

18 A. Yes.

19 Q. I have also handed you a document that has been marked as  
20 Defendant's Exhibit 4. I ask you to take a quick look at that  
21 document.

22 A. Exhibit 4?

23 Q. Yes. Do you see, if you look over to the third page of  
24 Exhibit 4, you see a signature that appears to be by the name  
25 of a gentleman by the name of Mr. Moraes. Do you see that?

16MJMLC2

Possari - direct

1 A. Yes.

2 Q. Is this Exhibit 4 what you're referring to in Paragraph 12  
3 of your trial affidavit?

4 A. I didn't understand.

5 Q. The first sentence of Paragraph 12 of your trial affidavit  
6 says, "I understand there is a document that was signed by Mr.  
7 Moraes that contains an opinion that a certain guaranty is  
8 enforceable."?

9 A. No.

10 MR. TIMMONS: I might be able to speed this along if I  
11 could work with the witness.

12 BY MR. TIMMONS:

13 Q. Paragraph 12 of your trial affidavit, do you see the  
14 reference in Paragraph 12 of your trial affidavit to this  
15 statement?

16 A. Si.

17 Q. It is referring to DX 3, an opinion that was Mr. Moraes --  
18 let me just read it for you. I understand that there is a  
19 document that was signed by Mr. Moraes that contains an opinion  
20 that a certain guaranty is enforceable.

21 Is this exhibit, Defendant's Exhibit 4, that opinion  
22 that was signed by Mr. Moraes that you're referring to in your  
23 trial affidavit?

24 A. The question is was it signed by --

25 Q. The question is: Is this the document you're referring to



16MJMLC2

Possari - direct

1 in Paragraph 12 of your trial affidavit?

2 A. Yes, it is.

3 Q. Mr. Possari, are the facts and information reflected in  
4 your trial affidavit true and accurate to the best of your  
5 knowledge?

6 A. Yes.

7 MR. TIMMONS: Thank your Honor. I have nothing  
8 further.

9 THE COURT: All right. Cross-examination, Mr. Rice.

10 MR. RICE: Thank your Honor.

11 CROSS EXAMINATION

12 BY MR. RICE:

13 Q. Good morning, Mr. Possari.

14 A. Good morning.

15 Q. Mr. Possari, I'd like you to keep before you your affidavit  
16 that you just were looking at with Mr. Timmons. You signed  
17 this affidavit, correct?

18 A. This one here, yes, I did.

19 Q. In submitting that signed declaration, you intended for the  
20 court to rely on it in this case?

21 A. Yes.

22 Q. You would agree, wouldn't you, that it is reasonable for  
23 the court and the parties to rely on what you've said in that  
24 declaration?

25 A. Yes.

16MJMLC2

Possari - cross

1 Q. It would be reasonable for the court and the parties to  
2 rely on your signed declaration even though the declaration is  
3 in the English language, correct?

4 A. Yes.

5 Q. You understand that this declaration is a serious document?

6 A. Yes.

7 Q. You're a serious person, are you not?

8 A. Yes.

9 Q. You're a careful person?

10 A. Yes.

11 Q. And you're an honest person?

12 A. Yes.

13 Q. How long have you worked for Itamarati, sir?

14 A. I didn't understand.

15 Q. Sir, isn't it true you have acted as Itamarati's lawyer for  
16 more than 30 years?

17 A. Yes.

18 Q. Just to be clear, when I say "Itamarati" today, I'll be  
19 referring to USINAS Itamarati?

20 THE INTERPRETER: Can you clarify?

21 Q. Today when I use the word "Itamarati," I mean to refer if  
22 you signed as Itamarati S.A., okay?

23 THE COURT: Not Moraes, Itamarati?

24 THE WITNESS: Itamarati.

25 MR. RICE: It is my accent.

16MJMLC2

Possari - cross

1 BY MR. RICE:

2 Q. Sir, you have been the senior -- withdrawn -- you have been  
3 a lawyer at USINAS Itamarati for more than 30 years, right?

4 A. Si.

5 Q. You were the senior lawyer there in 2007 and 2008, right?

6 A. Yes.

7 Q. In your capacity as a lawyer for USINAS Itamarati, you  
8 signed documents from time to time, correct?

9 A. Yes.

10 Q. You signed documents on behalf of USINAS Itamarati, right?

11 A. Yes.

12 Q. You signed contracts on behalf of UISA Finance?

13 A. We finance?

14 Q. Correct.

15 A. Yes.

16 Q. When you signed contracts on behalf of your employer, you  
17 understood that the parties to the contract would be relying on  
18 your signature. Isn't that true?

19 THE INTERPRETER: Can you repeat that?

20 Q. When you signed contracts on behalf of USINAS Itamarati and  
21 UISA Finance, you understood that the parties to those  
22 contracts would be relying on your signature, isn't that right,  
23 sir?

24 THE INTERPRETER: He can't understand my  
25 interpretation.

16MJMLC2

Possari - cross

1 Q. Let me try again. You signed contracts for USINAS  
2 Itamarati, right, sir?

3 A. Yes, sir.

4 Q. When you signed those contracts, people who saw your  
5 signature were entitled to rely on your signature. Isn't that  
6 right?

7 A. Yes.

8 Q. Parties to contracts that you sign on behalf of Itamarati  
9 were entitled to rely on your signature even though some of  
10 those contracts were in English, right?

11 A. Yes.

12 Q. In fact, sir, isn't it true that you never signed a  
13 document on behalf of USINAS Itamarati that you didn't believe  
14 was within the scope of your authority?

15 THE INTERPRETER: Can you repeat that?

16 Q. I'll ask a different question.

17 Have you, Mr. Possari, ever signed a document on  
18 behalf of USINAS Itamarati that you were not authorized to  
19 sign?

20 A. Sometimes I would, yes, sometimes I signed, and I got to  
21 the conclusion that I should have not signed it.

22 Q. So what you're saying is you signed documents, am I  
23 correct, sir, that you signed documents on behalf of USINAS  
24 Itamarati that you were not authorized to sign? That is your  
25 testimony here in court today?

16MJMLC2

Possari - cross

1 A. Yes. I am not understanding. Which company are you  
2 talking about?

3 I don't have any doubts that all the documents I  
4 signed were -- I don't have any doubt of the documents that I  
5 have signed.

6 Q. As to the documents you signed on behalf of USINAS  
7 Itamarati, you don't have any doubt that you were authorized to  
8 do that, correct?

9 A. Yes.

10 Q. One of the documents that you signed in the course of your  
11 duties was an ISDA master agreement.

12 THE INTERPRETER: Can you repeat that?

13 Q. I'll ask a different question.

14 Did you sign an ISDA master agreement with a Merrill  
15 Lynch entity in 2008?

16 A. Yes, sir.

17 (Continued on next page)

16mlmlc3

Possari - cross

1 BY MR. RICE:

2 Q. And you signed that document on behalf of UISA Finance.

3 A. Yes.

4 Q. And you understood that in signing on behalf of UISA  
5 Finance, you were obligating UISA Finance to the term and  
6 conditions of that ISDA master agreement.

7 A. Yes. I want to say one of the contracts needed to be  
8 signed for the guaranties of 2008.

9 Q. Let me just put before you some of these contracts so we  
10 can be sure we're speaking about the same thing. Would you  
11 open to -- there are several tabs here, but the first one is  
12 called PX1.

13 A. QX1?

14 Q. PX1. Should be the first tab. Do you have that before you  
15 now, sir?

16 A. Yes.

17 Q. And is this an ISDA master agreement between UISA Finance  
18 and Merrill Lynch Capital Services, Inc.?

19 A. I'm not understanding.

20 Q. Okay.

21 A. I think that the interpretation is not correct. I'm not  
22 understanding the translation.

23 THE COURT: All right. So what do you want to do  
24 about this, Mr. Werder? It's your witness; right? Twice now  
25 your witness has complained about the interpretation.

16mlmlc3

Possari - cross

1 MR. TIMMONS: Yes, your Honor. If we could, we'd like  
2 to switch interpreters. Perhaps the other interpreter can do a  
3 better job.

4 THE COURT: It's your call, but I mean, we can't do an  
5 examination without an interpreter. So you picked the  
6 interpreters. You decide what you want to do. Do you want to  
7 switch to Mr. Peterson?

8 MR. TIMMONS: Yes, if we could, please.

9 THE COURT: All right. Okay.

10 All right. Mr. Peterson, you're still under the same  
11 oath you took before with respect to faithfully, accurately  
12 translating from English into Portuguese and vice versa, all  
13 right?

14 THE INTERPRETER: Yes, your Honor.

15 BY MR. RICE:

16 Q. All right. Is Plaintiff's Exhibit 1 a contract that you  
17 signed on behalf of UISA Finance?

18 A. Yes.

19 Q. And you understood in doing -- in signing that contract  
20 that you were obligating UISA Finance to its obligations under  
21 that contract; correct?

22 A. Yes.

23 Q. Take a look at the next document. It should be  
24 Plaintiff's -- or PX4. Do you have that in front of you, sir?

25 A. Yes.

16mlmlc3

Possari - cross

1 Q. All right. Is this another contract that you executed in  
2 the course of your duties for USINAS Itamarati?

3 A. Yes.

4 Q. And you see, sir, that you signed in several places on this  
5 document.

6 A. Yes.

7 Q. You signed on behalf of UISA Finance; correct?

8 A. True. Yes.

9 Q. And in doing that, you understood that you were obligating  
10 UISA Finance to this agreement?

11 A. Yes.

12 Q. And you also signed on behalf of USINAS Itamarati; correct?

13 A. Yes.

14 Q. And you also understood that in signing on behalf of USINAS  
15 Itamarati, you were obligating it to its part of this  
16 agreement.

17 A. Yes. An observation: When I was signing these documents,  
18 I was signing --

19 THE INTERPRETER: And the interpreter needs to  
20 clarify.

21 A. -- I was under the understanding that I was signing a  
22 principal transaction of \$125 million, not a derivative.

23 Q. Sir, you had signed documents relating to a principal  
24 transaction of \$125 million back in November of 2007, isn't  
25 that so?



16mlmlc3

Possari - cross

1 A. Yes, November of 2007, 125 million.

2 Q. And --

3 A. And this is April.

4 Q. This is April of 2008; correct?

5 A. Yes.

6 Q. So -- and the agreement you signed in November of 2007 with  
7 regard to the \$125 million loan, that was with a lender called  
8 Merrill Lynch Credit Products; correct?

9 A. Both of them were with Merrill Lynch.

10 Q. Okay. Sir, would you take a look at tab -- Plaintiff's  
11 Exhibit -- Plaintiff's Exhibit 11 in your binder.

12 Sir, you see on the first page there the lender is --  
13 you see there's an entity identified as Merrill Lynch Credit  
14 Products, LLC?

15 A. Yes.

16 Q. And this is -- and this, Plaintiff's Exhibit 11, is the  
17 document that you signed in November of 2007 relating to the  
18 \$125 million loan; correct?

19 A. Repeat, please.

20 Q. Plaintiff's Exhibit 11, sir, that is the loan agreement  
21 that you signed in November of 2007 in connection with the  
22 \$125 million loan that you just testified about; right?

23 A. I signed it, yes.

24 Q. And if you go back to Plaintiff's Exhibit 4 and look at the  
25 first page of that, you can see, can you not, that there is a

16mlmlc3

Possari - cross

1 different Merrill Lynch entity that it is shown on that  
2 contract, specifically, Merrill Lynch Capital Services, Inc.?

3 A. Yes.

4 Q. You didn't think -- withdrawn.

5 A. But here, here there's no distinction made.

6 Q. You're saying on the logo on the top of the document it  
7 just says Merrill Lynch, right. But, sir, you're -- but, sir,  
8 you're a lawyer; right? Correct?

9 A. Yes.

10 Q. And you understand, looking at the document, that the party  
11 with whom you were contracting was Merrill Lynch Capital  
12 Services. That's what it says; right?

13 A. No, no. No, no, no. I repeat again, the understanding was  
14 this was a continuation of the principal loan, not a  
15 derivative, not with different rates or anything like that, not  
16 a derivative.

17 THE COURT: So what was the purpose of the document  
18 then? Just fun to do these multiple times? It's just fun to  
19 do these things multiple times, six months, eight months apart,  
20 a year apart?

21 THE WITNESS: It could have been an addition or  
22 something, a change in the contract. During the time of a  
23 year, you could still do that.

24 THE COURT: You signed the document, did you not?

25 THE WITNESS: Yes, I signed it.

16mlmlc3

Possari - cross

1 THE COURT: Did you read it?

2 THE WITNESS: No.

3 THE COURT: Did you have it read to you, translated  
4 for you? Did you have it read, or rather translated into  
5 Portuguese for you?

6 THE WITNESS: No.

7 THE COURT: Good practice, you think?

8 THE WITNESS: No, no. It was just trust in the one  
9 that was responsible financially, the financial officer that  
10 was taking care of the transaction.

11 THE COURT: You're an attorney?

12 THE WITNESS: Yes.

13 THE COURT: Do you have an understanding of how  
14 contracts operate in Brazil?

15 THE WITNESS: Yes.

16 THE COURT: When you signed this contract, did you  
17 think you were binding the companies for which you were  
18 signing?

19 THE WITNESS: Yes, I signed it, but I repeat, I  
20 thought I was signing with reference to the principal. I  
21 thought it was a continuation of the principal loan.

22 THE COURT: You understood that by signing this  
23 document, you were binding the entities for which you were  
24 signing to the terms of the agreement.

25 THE WITNESS: No. I didn't understand.

16mlmlc3

Possari - cross

1 THE COURT: You didn't understand that, that your  
2 signature would have no such effect.

3 THE INTERPRETER: Interpreter clarification. It  
4 appears that he's saying he did not understand the question.

5 THE COURT: Oh, I'm sorry. Did you understand that by  
6 signing the agreement, you were binding the companies for which  
7 you were signing?

8 THE WITNESS: Yes.

9 THE COURT: All right. Go ahead, Mr. Rice.

10 BY MR. RICE:

11 Q. Now, sir, you told us a few minutes ago that you didn't  
12 know anything about a derivative transaction with Merrill  
13 Lynch. Is that your testimony?

14 A. Yes, yes. I didn't know it was going to be a derivative.

15 Q. And you never heard anything about a derivative transaction  
16 with Merrill Lynch, in 2008. That's your testimony.

17 A. Yes, I hadn't.

18 Q. Would you look at Plaintiff's Exhibit 56 in the binder in  
19 front of you, sir.

20 A. The same page 56?

21 Q. It's PX56. There's a tab there.

22 Sir, do you have that in front of you now?

23 A. Yes.

24 Q. All right. And that is a series of e-mails; correct?

25 A. True.

16mlmlc3

Possari - cross

1 Q. I'd like to direct your attention first to the one that is  
2 second from the bottom, from Christiano Basto (ph) Morales to  
3 you.

4 A. Yes.

5 Q. Okay. And that references Merrill Lynch and ISDA, UISA  
6 Finance; correct?

7 A. Yes.

8 Q. And Mr. Morales writes to you, "Ernesto, I am sending the  
9 master contract for derivative operations with Merrill Lynch  
10 for legal analysis." Does he not?

11 A. It is.

12 Q. And you didn't write back to Mr. Morales and say, "What  
13 derivative operation," did you?

14 A. No. I answered right here.

15 Q. Right. You didn't say to him, in this e-mail or any other  
16 e-mail, "I don't know anything about derivative operations with  
17 Merrill Lynch." Right?

18 A. Repeat, please.

19 Q. Sir, you didn't -- you didn't tell Mr. Morales, in this  
20 e-mail or any other e-mail that you can produce to us, that you  
21 didn't understand that your company was doing derivative  
22 operations with Merrill Lynch; right?

23 A. No, no.

24 Q. Sir, would you return back to PX4. Now I'd like you to  
25 turn to the signature pages. First, we showed you before you

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Possari - cross

1 signed on behalf of UISA Finance. I'd like you to find your  
2 signature there. Do you see that?

3 A. Yes, yes.

4 Q. And right below your signature, it says, USINAS Itamarati  
5 SA, as guarantor. Do you see that?

6 A. That's true.

7 Q. Right. And even though you don't speak English, you know  
8 what it means for Itamarati to sign as guarantor; isn't that  
9 right?

10 A. Yes, yes, but I keep saying, I understood that they were  
11 the guarantor of \$125 million, not as a swap.

12 Q. All right. But, sir, when you -- when you saw this  
13 document and you saw "as Guarantor" after Itamarati's name and  
14 you signed on behalf of Itamarati, you understood you were  
15 obligating Itamarati as guarantor; correct?

16 A. Yes, yes.

17 Q. And, sir, isn't it true that after the date of this  
18 document you signed two other confirmations just like this on  
19 behalf of USINAS Itamarati as guarantor?

20 A. What -- what documents?

21 Q. You'd like to see the documents, sir?

22 A. After the document of November of 2007?

23 Q. Sir, let's look at the documents. Look at PX5, the next  
24 document in your binder there. Sir, that is another contract  
25 with Merrill Lynch Capital Services; correct?

16mlmlc3

Possari - cross

1 A. PX5; right?

2 THE COURT: Yes.

3 Q. Yes.

4 A. Yes.

5 Q. PX5 is the one we were just looking -- I'm sorry. Yes,  
6 PX5. And your signature is all over that document; isn't that  
7 correct?

8 A. True.

9 Q. And you signed not only on behalf of UISA Finance but also  
10 again on behalf of USINAS Itamarati as guarantor; right?

11 A. True.

12 Q. And would you take a look at Exhibit 8. Excuse me. I  
13 apologize. PX -- PX6. This is another agreement you signed on  
14 behalf of UISA Finance and USINAS Itamarati as guarantor;  
15 right?

16 A. True.

17 Q. And, sir -- sir, you'll agree with me -- withdrawn.

18 Sir, it was reasonable, was it not, for Merrill Lynch,  
19 as the counterparty, to rely on your signature as being  
20 authorized on behalf of USINAS Itamarati; isn't that right?

21 A. USINAS Itamarati depended on my signature? Please?

22 Q. Sir, my question is -- to you is: You understood in  
23 signing this that Merrill Lynch was going to be relying on your  
24 signature as binding USINAS Itamarati as guarantor; right?

25 A. Yes.

16mlmlc3

Possari - cross

1 Q. Now, sir, it's true, isn't it, that to this very day no one  
2 at Itamarati has criticized you for signing these documents?

3 A. No. Someone's criticized? No, I didn't understand the  
4 question.

5 Q. Sir, isn't it true -- withdrawn.

6 You never told anyone from Merrill Lynch that you  
7 weren't fully authorized to sign each and every one of these  
8 contracts; isn't that right, sir?

9 A. No, but always conscious that it was the principal loan,  
10 not as a swap.

11 Q. Sir, there was nothing to prevent you from having someone  
12 read these documents to you or have them interpreted; correct?

13 A. True.

14 Q. All right. And back to my question. You certainly never  
15 told anyone from Merrill Lynch that you were not fully  
16 authorized to sign these documents on behalf of UISA Finance  
17 and USINAS Itamarati.

18 A. True.

19 Q. Now the Itamarati group of companies was -- at all relevant  
20 times in 2007 and 2008, it was a privately held company; right?

21 A. Yes. Close capital and private.

22 Q. And you're familiar with the bylaws of USINAS Itamarati,  
23 are you not?

24 A. What laws? What laws?

25 THE COURT: The bylaws, corporate bylaws.



16mlmlc3

Possari - cross

1 Q. Sir, are you familiar with the corporate bylaws of USINAS  
2 Itamarati?

3 A. Oh, yes. Yes, the statutes, yes.

4 Q. Okay. And you -- under those statutes, the board of  
5 directors of USINAS Itamarati was to have three regular  
6 meetings a year; right?

7 A. No. The board or what?

8 Q. Yes, the board of directors. Let me try it again.

9 Under the bylaws of USINAS Itamarati, its board of  
10 directors was to have three regular meetings a year. That's  
11 what the bylaws say; right?

12 A. No, no. I don't remember those meetings were obligatory.

13 Q. Would you take a look, sir, at PX21 in the binder in front  
14 of you.

15 A. 21?

16 Q. 21. You'll see the first page of that is a March 22<sup>nd</sup>,  
17 2007 e-mail. And then what is the document that follows that  
18 e-mail? I'm talking specifically about the document that  
19 starts at the page number at the lower right-hand corner 11835.

20 A. 11835, yes.

21 Q. Okay. Is what appears on page 11835 or what starts there,  
22 is that -- are those minutes of a shareholders meeting?

23 A. Yes. What -- no. Wait. What do you want to say about  
24 page 1835? That is the --

25 Q. The document starts on page 11835 and finishes with your

16mlmlc3

Possari - cross

1 signature on page 11837. Sir, what is that?

2 A. This is an act to approve the bylaw.

3 Q. Okay. And then starting on page 11838, is that where the  
4 bylaws actually start?

5 A. Yes.

6 Q. Okay. And would you take a look in the bylaws at Article  
7 XXI.

8 THE COURT: What page is it?

9 MR. RICE: For Article XXI in his version --

10 THE COURT: 11844 or 118 -- no, 118 --

11 MR. RICE: It's 11841. And then for your Honor, it's  
12 the same numbers with the translation.

13 A. Yes, it's XXI.

14 Q. That provides, does it not, sir, that the board of  
15 directors ordinarily meet three times a year; right?

16 A. The board of directors will meet once a trimester when  
17 invited to.

18 Q. And, sir, do you know -- withdrawn.

19 And it also says that there can be extraordinary  
20 meetings of the board of directors; correct?

21 A. Yes.

22 Q. Sir, do you know whether the board of directors of  
23 Itamarati, from your own personal knowledge, ever met at any  
24 point in time in 2007 or 2008?

25 A. No. Yeah, well, 2007, 2000 -- yeah, sure, there would have

16mlmlc3

Possari - cross

1 had -- there would have been a meeting to approve the material,  
2 yes. Could I clarify? Could I clarify a little?

3 Q. Sure.

4 A. Any act that is going to be taken into effect by an  
5 officer, that would have had to be approved by the board of  
6 directors. Any time that something would be discussed with --  
7 with members of the board of directors --

8 THE INTERPRETER: Excuse me, the interpreter.

9 A. The board of directors, there would not necessarily be a  
10 formal meeting because it's a private company. There are no  
11 stockholders involved. The things would be discussed with the  
12 officers or with the board, not necessarily having a formal  
13 meeting, maybe even by telephone.

14 Q. Sir --

15 A. And then they would be brought to be signed. At the point  
16 of being signed, we would already have previous knowledge.

17 Q. Sir, did you, in 2007 and 2008, attend any meeting of the  
18 board of directors of USINAS Itamarati?

19 A. No.

20 Q. So you don't know from your own personal knowledge whether  
21 the board ever met because you were never there.

22 A. Yes, but I know -- I know that they had meetings. They  
23 would handle things over the phone, Edezio would go to  
24 Claudia's house --

25 Q. Sir, if I --

16mlmlc3

Possari - cross

1 A. -- they would handle things over the phone, they would  
2 handle things in person. It was not a formal meeting.

3 Q. When you say they --

4 A. And that was what happened at that time when the loan was  
5 approved for 125 million --

6 Q. Sir, you don't --

7 A. -- which is completely in agreement with the bylaws.

8 Q. Sir, you didn't attend any meetings of the board of  
9 directors at which the \$125 million loan was approved; right?

10 A. I repeat. I did not go to any meetings. The meetings were  
11 handled in the way that I just described.

12 Q. Right. But you were not present and you did not witness  
13 this; right?

14 A. No. I know it was talked about. I wasn't present, but I  
15 know it was talked about.

16 Q. Sir, would you take a look at --

17 A. So much so that the members of the board signed.

18 Q. You know the members of the board signed resolutions, but  
19 you were not at any meetings where those resolutions were  
20 discussed; right?

21 A. True, no. There wouldn't have been a need of my presence.

22 Q. Sir, take a look at PX30 in the binder in front of you.

23 And turn to the second page of the document. That's the one  
24 that has the number in the lower right-hand corner 9976. Do  
25 you see that?

16mlmlc3

Possari - cross

1 A. 996 or 7?

2 Q. 9976. Do you see that, sir?

3 A. Yes.

4 Q. Is that the resolution of USINAS Itamarati that approves  
5 its guaranty of the \$125 million loan?

6 A. Yes.

7 Q. Let's look at those minutes for a moment. The very first  
8 thing those minutes say is, "Date, location, and time."  
9 Correct?

10 A. True.

11 Q. And it reflects that on the 9<sup>th</sup> of November 2007, there was  
12 a meeting at company headquarters in the city of Nova Olímpia,  
13 state of Mato Grosso, Fazenda Guanabara; correct?

14 A. True.

15 Q. But if there was such a meeting, you weren't there, as you  
16 just told us; right?

17 A. True.

18 Q. The next item on this minutes says, "Summoning and  
19 attendance." Right?

20 A. No. The summoning was -- was dismissed. They didn't have  
21 a summoning, because all were present.

22 Q. Right. So this says, "The summoning and attendance were  
23 waived because of the presence at this meeting of all the  
24 members of the board of directors." Correct?

25 A. Yes.

16mlmlc3

Possari - cross

1 Q. All right. And this reflects, sir, that you were here,  
2 doesn't it?

3 THE INTERPRETER: Could the interpreter have that  
4 question repeated, please.

5 MR. RICE: Sure.

6 Q. In this minutes the next thing it reflects is that you  
7 acted as secretary of this meeting.

8 A. Yes.

9 Q. But you were at no meeting on November 9<sup>th</sup>, 2007; right?

10 A. At the meeting, no. At the meeting, no. But I did talk  
11 about it. It was handled and I made the resolution. Then in a  
12 book where I put the resolution, I have the signatures of all  
13 the shareholders, and I did this.

14 Q. So it's your testimony, sir -- sorry. Go ahead.

15 A. And since it is a family business, the matters are talked  
16 about between the family, including the mother-in-law, the  
17 resolutions are signed, and then I have them all in a book.  
18 And this is a resolution that's an abstract of the book that I  
19 have, and all the resolutions are together in the book.

20 Q. Sir, I'd like you to answer my question now, if we might.

21 A. Yes.

22 Q. You were designated as secretary for this meeting; right?

23 A. Yes.

24 Q. And you didn't attend any such meeting; right?

25 A. No.

16mlmlc3

Possari - cross

1 Q. You say at the end -- you signed this at the end as  
2 secretary; correct?

3 A. Yes, it's here.

4 Q. And just before you signed you say, "This is a true  
5 copy --" withdrawn.

6 Just before your signature these -- this resolution or  
7 these minutes say, "This is a true copy of the original drawn  
8 up in the book." Right?

9 A. Yes.

10 THE COURT: Just answer the question.

11 A. Yes.

12 Q. Have you looked at the book in relation to this meeting on  
13 November 9<sup>th</sup> of 2007?

14 A. Yes, I have.

15 Q. Would you take a look at, in the stack of your binders,  
16 it's DX22.

17 MR. RICE: Can I --

18 THE COURT: Yes.

19 MR. RICE: See if I can help you, sir.

20 THE COURT: Any particular page you want him to look  
21 at?

22 MR. RICE: I first want to ask him:

23 Q. What is this?

24 A. This is a page of the book.

25 Q. Okay. Would you now turn to --

16mlmlc3

Possari - cross

1 A. The resolution has the signature of the secretary and the  
2 chairman of the table.

3 THE INTERPRETER: The interpreter is going to ask for  
4 that to be repeated.

5 A. This resolution is a page of the book with the signatures  
6 of all the members of the board, and the other is just an  
7 abstract that goes to be registered.

8 Q. Sir, I'd like you to look in the -- in the DX22 at the page  
9 that has the number on the bottom right, 19741.

10 A. DX?

11 THE COURT: I don't have that one. I don't know if he  
12 does. They're not in order?

13 A. What page?

14 Q. Hold on one second. I'm looking at the English language  
15 version. Maybe there's a problem --

16 THE COURT: 65 of 71.

17 MR. RICE: 65 of 71 is the English language.

18 Q. Sir, if you look in the middle on page 65 of 71 --

19 A. 65.

20 THE COURT: In the middle, in the fold. DX22, page 65  
21 of 71?

22 MR. RICE: Right.

23 THE COURT: Look for that. They're not in order.  
24 That's the problem. This is the number, but on the bottom  
25 right they are not in order.



16mlmlc3

Possari - cross

1 A. Yes.

2 Q. So does that appear to be minutes of the same meeting we  
3 were just talking about where USINAS Itamarati approved the  
4 guaranty of the \$125 million loan?

5 A. Yes.

6 Q. This one shows Ms. Jatahy as the secretary, does it not?

7 A. Yes, Carla Eloy Jatahy as secretary.

8 Q. It shows her name in the text of the resolution and she  
9 signed it as secretary.

10 A. That's true. That's correct.

11 Q. Who was the secretary of this meeting, you or Ms. Jatahy?

12 A. Here, Carla Eloy Jatahy was the secretary.

13 Q. And sir, what we looked at in P -- in PX30, you were shown  
14 as the secretary of the same meeting; correct?

15 A. Let's look. I want to turn back there. I want to compare.

16 Q. Okay. So --

17 A. P30?

18 Q. And then go back to PX30.

19 A. Can I explain?

20 Q. No. My question to you, sir, is: Who was the secretary of  
21 the meeting, you or Ms. Jatahy?

22 A. These are two different documents.

23 THE COURT: You're looking at the wrong one. 9976;  
24 right?

25 Q. If I can just show --

16mlmlc3

Possari - cross

1 MR. RICE: Can I, your Honor, come up and show him?

2 THE COURT: Yes.

3 Q. Let's first look at 9976. This is the document you were  
4 looking at before. These are the minutes for the board of  
5 directors meeting of USINAS Itamarati; correct?

6 A. Yes.

7 Q. And this related to the approval of its guaranty of the  
8 \$125 million loan; right? And now going to the minute book,  
9 you see these are -- also purport to be minutes of a meeting of  
10 USINAS Itamarati --

11 A. I see now, yes, correct. That's correct.

12 Q. -- relating to that --

13 A. Yes, that's correct.

14 Q. -- to the approval of the \$125 million loan?

15 A. That's correct, yeah, yeah. I'm sorry. That's correct. I  
16 understand.

17 Q. Who was the secretary of the meeting, sir? You don't know;  
18 isn't that right?

19 A. This -- this was -- this resolution right here was the  
20 first one where it has two members of the board signing, and  
21 Carla was the secretary. The second one was where I signed.  
22 This was an abstract of that.

23 Q. Well, sir, when you signed an abstract saying it was a true  
24 and correct copy of the original, sir, that wasn't -- that  
25 wasn't correct; right?

16mlmlc3

Possari - cross

1 A. Yeah, that was -- that was my mistake in signing it. But  
2 because of my mistake, that does not invalidate the guaranty.  
3 We did sign the guaranty.

4 Q. Isn't it true, sir, that you -- that neither you nor  
5 Ms. Jatahy was the secretary of any meeting on November 9<sup>th</sup>  
6 of 2007?

7 A. Isn't it true what? I -- what? Neither I nor her what?

8 Q. You didn't attend the meeting on November 7<sup>th</sup>, 2007 --  
9 excuse me -- November 9<sup>th</sup>, 2007 of the Itamarati board of  
10 directors; right?

11 A. That's true. No. Like I said, they didn't -- there wasn't  
12 a meeting. They just made up the resolution and they got the  
13 signatures and that was it.

14 (Continued on next page)

15  
16  
17  
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24  
25

16MJMLC4

Possari - cross

1 Q. They just made up the resolution and got the signatures for  
2 meetings like this on a routine basis, right?

3 A. They would discuss it informally and then they would say  
4 okay, we're going to do this, we're going to do this, and we  
5 get the signatures and they would make the abstract of the  
6 resolution.

7 Q. You don't know what they discussed informally because you  
8 weren't there, right?

9 A. No, I wasn't there, but I know that they talked about the  
10 approval for the loan.

11 THE COURT: How do you know that? How do you know  
12 that?

13 THE WITNESS: I didn't understand, how do I know what?

14 THE COURT: How do you know that they talked about the  
15 approval for the loan?

16 THE WITNESS: Because I saw the signatures, because  
17 that is how they would do all the time. They would talk about  
18 the matter, then they would bring it to me. I would make the  
19 resolution and then it would get the signatures.

20 When I get the signatures of the parties involved --

21 THE INTERPRETER: Of the people involved --

22 THE WITNESS: -- they would already know about the  
23 subject that had been discussed.

24 THE COURT: Who told you to do this?

25 THE INTERPRETER: Interpreter error.

16MJMLC4

Possari - cross

1 THE WITNESS: The coordinator of whatever was being  
2 discussed, in this case who is taking the lead with the bank,  
3 it should have been Edezio, and then they would talk with the  
4 shareholders and the board. Once it had been approved, they  
5 would come to me and I would draw up the resolution.

6 THE COURT: Who would get the signatures?

7 THE WITNESS: Me, I would get the signatures.

8 THE COURT: Well, do you recall getting the signatures  
9 for the resolution that was in the book? You weren't there,  
10 right?

11 THE WITNESS: No, that's true, but the matter was  
12 already closed and approved and it was just a matter of me  
13 drawing up the resolution --

14 THE INTERPRETER: Interpreter error.

15 THE WITNESS: -- and getting the signatures. When I  
16 get the signatures, the people already knew what they were  
17 signing about because the matter had already been discussed.  
18 You have to understand that this is a family business. It is  
19 not a complex business. The members of the board, they're  
20 family.

21 THE COURT: How did you know that they had this  
22 conversation at all, that they weren't just blindly signing  
23 something that had been slipped under their nose?

24 THE WITNESS: Because when I would go to get the  
25 signatures, I would say look, I need your signature for this

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Possari - cross

1 loan from the bank, and they would say oh, yeah, I know, I  
2 know, we already talked about that.

3 THE COURT: You recall that in this particular  
4 instance?

5 THE WITNESS: Getting the signatures?

6 THE COURT: And having that conversation?

7 THE WITNESS: Yes, with the members of the board, yes,  
8 I remember.

9 BY MR. RICE:

10 Q. It is your testimony, even though your signature is not on  
11 the version of these minutes, it is in the book, you have a  
12 specific recollection of collecting the signatures on that?

13 A. I remember, yes, I remember. Yes, I remember. One is the  
14 resolution in the book and the other is the abstract, and I  
15 signed the abstract.

16 I might have done this because if there is ever a need  
17 to register anything, you send an abstract of the resolution,  
18 and so I probably did this to have it to register.

19 THE COURT: Do you have any recollection of that?

20 THE WITNESS: Yeah, of signing it? No, no, I don't  
21 remember. I am seeing, I am perceiving this now.

22 BY MR. RICE:

23 Q. This was a lot of red tape for the company, wasn't it, sir?

24 THE COURT: What is "this"?

25 Q. All --

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Possari - cross

1 A. No. It is very simple. No, it was, the resolution was  
2 assigned, signed it. I don't have any doubt about the  
3 document.

4 BY MR. RICE:

5 Q. Sir, Itamarati --

6 A. I confirm that this document is authentic.

7 Q. Which document is authentic?

8 A. The resolution that approved the transaction, the  
9 resolution that was approved for USINAS Itamarati and the  
10 resolution for the guaranty, but of the principal of the loan.

11 THE COURT: The one in the book confirmed?

12 THE WITNESS: All of this is in the book, all of these  
13 decisions are in the book.

14 THE COURT: The point is your signature is not on the  
15 exhibit that is in the book?

16 THE WITNESS: No, it is not there.

17 THE COURT: But it is your testimony --

18 THE WITNESS: It was another secretary that signed  
19 there.

20 THE COURT: So when did the board members sign the  
21 book, November 9th or some other day?

22 THE WITNESS: It could be -- I don't know, I don't  
23 know what to say -- it could be the next day, it could be a  
24 couple of days later. The matter had already been approved.  
25 Normally the same day, we would have it done the same day.

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Possari - cross

1 BY MR. RICE:

2 Q. The answer the Judge's question, you don't know when the  
3 board members put their signatures on this document that is in  
4 the board book, right?

5 A. This document?

6 Q. Yes, sir.

7 A. I don't know.

8 Q. Sir, isn't it true that Itamarati no longer has a board of  
9 directors?

10 A. Right now, no. It was, it was terminated May of 2009.

11 Q. Isn't it true, sir, that the reason -- your understanding  
12 is that the reason why the board was terminated in 2009 was to  
13 reduce red tape, like the red tape we have been looking at?

14 A. Yes.

15 Q. Sir, you can close that book right now.

16 Would you find your affidavit again. When you get  
17 your affidavit, would you go to Paragraph 12 of the affidavit  
18 and feel free to look at the translation that is Defendant's  
19 Exhibit 30 that you have there as well. Do you see in the  
20 second sentence there it says, "Mr. Moraes was not authorized  
21 to sign this legal opinion by me or by anyone else in the legal  
22 department." Do you see that?

23 A. Yes.

24 Q. What did you mean by that statement?

25 A. As a subordinate, he should come to me.



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Possari - cross

1 Q. So you're not saying you told him he can't sign legal  
2 opinions, right?

3 A. True, it is here in the document.

4 Q. You're certainly not saying, sir, that you ever told anyone  
5 from Merrill Lynch that Mr. Moraes was not authorized to  
6 provide a legal opinion on behalf of USINAS Itamarati, correct?

7 A. No, because I found out about this recently before this --

8 THE INTERPRETER: The interpreter needs to clarify.

9 (Pause)

10 A. -- I found out about this statement by Mr. Moraes recently.

11 Q. My question was a simple one. You never told anyone from  
12 Merrill Lynch that there was any limitation on Mr. Moraes'  
13 authority?

14 A. With him, no, never. I didn't speak. You're talking about  
15 with respect to the statement?

16 Q. I am talking about did you ever tell anyone from Merrill  
17 Lynch in any way that Mr. Moraes was limited in terms of his  
18 ability to provide a legal opinion?

19 A. No, no, no, no.

20 Q. It's true, sir, isn't it, that -- withdrawn -- Mr. Moraes  
21 no longer works for you, right?

22 A. Mr. Moraes, does he still work, is that what you're saying?

23 Q. Is Mr. Moraes still employed by Itamarati?

24 A. No.

25 Q. He was laid off in 2009, right?

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Possari - cross

1 A. Yes.

2 Q. He was laid off, having nothing to do with any of the  
3 matters that bring us here today, correct?

4 A. True.

5 Q. He was an admitted Brazilian lawyer, right?

6 A. Yes, he was a Brazilian lawyer.

7 Q. You knew that because you supervised him, right?

8 A. Did I know what?

9 Q. That he was a lawyer admitted to practice in Brazil?

10 A. I'm not understanding, practice what?

11 Q. Was Mr. Moraes a member of the Brazilian legal bar?

12 A. He worked for us just two or three years at Itamarati.

13 After that he was let go.

14 Q. In 2008 Mr. Moraes worked for you, you know he was a member  
15 of the Brazilian legal bar, right?

16 A. I think it was the terms that I'm not understanding. I  
17 think it is the terms I'm not understanding. He was a  
18 registered lawyer contracted by Itamarati. He worked for us  
19 for two or three years. I don't understand this members and  
20 things like that, but he was a registered, contracted attorney.  
21 He was hired specifically to work with contracts.

22 Q. Thank you, sir.

23 Sir, Ms. Tamer told us to ask you about some questions  
24 about UISA Finance, so I'm going to do that. What is UISA  
25 Finance?

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Possari - cross

1 A. It's an offshore that we have on the islands.

2 Q. When was it formed?

3 A. I don't remember the year.

4 Q. Do you recall it was shortly before the loan agreements  
5 with Merrill Lynch Credit Products?

6 A. Yeah, a little bit before. It was before.

7 Q. It's a special purpose vehicle, isn't it?

8 A. I don't know.

9 Q. You don't know?

10 A. I don't know.

11 Q. You do know, sir, don't you, that it was set up in order to  
12 facilitate financing transactions with USINAS Itamarati on a  
13 tax advantage basis?

14 A. I don't know.

15 THE COURT: Who does know this?

16 THE WITNESS: Who should know this? The Jestor of the  
17 company, Edezio.

18 THE INTERPRETER: The interpreter is having a problem  
19 with the word here. Can I clarify, Judge?

20 THE COURT: Yes.

21 (Pause)

22 THE COURT: That might be more true than anyone  
23 realizes. Jestor?

24 THE WITNESS: He's the one that directs the  
25 businesses, he's above the officer.

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Possari - cross

1 BY MR. RICE:

2 Q. The "he" is Mr. Olivera?

3 A. Yes.

4 Q. And Mr. Olivera, is he here in New York now?

5 A. Yes.

6 Q. He understands the financing transactions that are at issue  
7 in this case, right?

8 A. Yes.

9 Q. UISA Finance, you do know, I take it -- withdrawn -- are  
10 you an officer of UISA Finance?

11 A. Yes.

12 Q. You were in 2007 and 2008, correct?

13 A. Yes.

14 Q. You do know it doesn't have any business of its own, right?

15 A. It has its own business? I didn't understand.

16 Q. Let me back up.

17 Has UISA Finance done any transactions other than the  
18 loan and a derivative that we have been talking about today?

19 A. No, no, no, I don't know, I don't know, I don't remember, I  
20 don't remember. In the last years, the last few years?

21 Q. At any point in time when it was formed in 2007, has UISA  
22 Finance done any transactions other than the loan agreement and  
23 the derivatives we have been talking about today?

24 A. No, I don't know what to tell you. I don't remember, I  
25 don't remember if it has done any other transactions.

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Possari - cross

1 Q. Do you remember if it has any assets of its own?

2 A. Assets, assets, what are assets?

3 Q. Does it own, does it own anything?

4 THE INTERPRETER: Interpreter error.

5 A. No.

6 THE COURT: You don't know or you know that it has no  
7 assets?

8 THE WITNESS: I don't know. I don't remember if it  
9 has any. It doesn't, it doesn't have, it doesn't have any, no,  
10 no, I don't remember, I don't remember.

11 BY MR. RICE:

12 Q. I am sorry, sir. I want to get a straight answer here. Do  
13 you know one way or the other whether UISA Finance has any  
14 assets of its own?

15 A. No, no.

16 Q. No, you don't remember?

17 A. I don't remember.

18 Q. Do you know whether UISA Finance has any employees of its  
19 own?

20 A. No.

21 THE COURT: Who knows? That is something again  
22 Mr. Olivera knows?

23 THE WITNESS: I didn't understand.

24 THE COURT: Who would know whether this company has  
25 assets or employees or what its purpose is.

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Possari - cross

1 Again, Mr. Olivera?

2 THE WITNESS: Yeah, employees, I already said it  
3 doesn't have any, but assets I don't know.

4 THE COURT: Who would know these things?

5 THE WITNESS: Maybe, maybe the Jestor, Olivero.

6 THE COURT: Maybe?

7 THE WITNESS: He knows, he has knowledge of this.

8 THE COURT: Anyone else?

9 THE WITNESS: No, no,. He should know.

10 BY MR. RICE:

11 Q. Would you turn now in the book in front of you again to PX  
12 193. I would like you to take a look at the document, sir, and  
13 see if you can tell us what it is.

14 A. It's a change transaction.

15 Q. In this transaction UISA Finance -- excuse me -- in this  
16 transaction USINAS Itamarati is buying 500,000 U.S. dollars,  
17 correct?

18 THE INTERPRETER: The interpreter asks for the amount  
19 to be repeated.

20 BY MR. RICE:

21 Q. 500,000 U.S. dollars?

22 A. Yes.

23 Q. You signed this exchange agreement on behalf of USINAS  
24 Itamarati, right?

25 A. Yes.

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Possari - cross

1 Q. If you turn to the fourth page of the document which bears  
2 the Production No. 14002, you see in a box there on that page  
3 it indicates, does it not, sir, that those funds would be  
4 transferred for the benefit of UISA Finance?

5 A. Where is Page 4, here?

6 Q. Looking at the fourth page of the document which bears the  
7 Production No. 14002.

8 A. Here.

9 Q. You see there is a reference there to UISA Finance inside  
10 that box?

11 A. Yes.

12 Q. So, sir, having looked at that, you understand, don't you,  
13 that this was an exchange, a currency exchange transaction that  
14 was done in late September so that \$500,000 could be posted as  
15 margin for UISA Finance's obligations to Merrill Lynch Capital  
16 Services, right?

17 A. That's true, yes.

18 MR. RICE: This is a new exhibit which wasn't on our  
19 list originally, but I move it in evidence.

20 THE COURT: PX 193?

21 MR. RICE: Yes.

22 THE COURT: Is there an objection?

23 MR. TIMMONS: No objection.

24 THE COURT: Plaintiff's Exhibit 193 is received.

25 (Plaintiff Exhibit 193 received in evidence)

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Possari - cross

1 BY MR. RICE:

2 Q. I'll try to deal with these quickly if I can. Would you  
3 please look at PX 191. Sir, you're not shown on this e-mail,  
4 but if you look on the to line, the first name is one named  
5 Carlos Augusto Olsac Fretas. Was Mr. --

6 A. Carlos Augusto?

7 Q. Olsac Fretas. He worked for USINAS Itamarati, didn't he?

8 A. Carlos Augusto?

9 Q. Yes.

10 A. No, I don't know Carlos Augusto.

11 Q. How about you see in the CC line Mr. Rocha and Mr. Moraes,  
12 they worked for USINAS Itamarati, right?

13 A. Moraes, yes. Carlos Augusto, he could be like an employee,  
14 a financial employee. I don't know. I don't remember. But  
15 Moraes, yes, Moraes was a manager.

16 Q. Maybe I can deal with this quickly.

17 MR. RICE: I move 191 and 192 in evidence.

18 THE COURT: Any objection?

19 MR. TIMMONS: No objection.

20 THE COURT: 191 and 192 are received.

21 (Plaintiff Exhibits 191 and 192 received in evidence)

22 MR. RICE: One moment, your Honor.

23 (Pause)

24 MR. RICE: No further questions.

25 THE COURT: All right. Okay. Mr. Timmons?



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Possari - cross

1 MR. TIMMONS: May I have one moment, your Honor?

2 THE COURT: Yes.

3 (Pause)

4 MR. TIMMONS: Nothing further, your Honor.

5 THE COURT: I have a couple of questions.

6 Are you aware of any instance in which the board ever  
7 disagreed with a recommendation made by Mr. Olivera?

8 THE WITNESS: No, I don't remember.

9 THE COURT: How often did Mr. Olivera speak with Ms.  
10 Tamer?

11 THE WITNESS: They talked constantly.

12 THE COURT: How about with the other members of the  
13 board, how often did Mr. Olivera, to your knowledge, speak with  
14 those two persons?

15 THE WITNESS: Well, to my knowledge, they talked  
16 regularly with the chairman of the board.

17 THE COURT: The other board members?

18 THE WITNESS: Well, the other members, they speak, but  
19 not with the same frequency that they speak with the chairman.

20 THE COURT: Meaning Ms. Tamer, the chairman?

21 THE WITNESS: Yes, she is the president, exactly. The  
22 other members are her family members.

23 THE COURT: Any other questions in light of what I  
24 asked?

25 MR. RICE: No, your Honor.

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Possari - cross

1 MR. TIMMONS: No, your Honor.

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: Next witness.

5 MR. CASHMAN: The defendants call Paulo Marcos  
6 Rodrigues Brancher..

7 PAULO MARCOS RODRIGUES BRANCHER,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CASHMAN:

12 Q. Good afternoon, Mr. Brancher.

13 A. Good afternoon.

14 Q. I have placed before you a copy of your trial affidavit in  
15 this case. Would you refer to that, please, sir?

16 A. Yes.

17 Q. Specifically directing your attention to Paragraph 8,  
18 please, sir, is there a typographical error in that paragraph?  
19 Do you know, sir?

20 A. It is Article 22, VI and not IV.

21 Q. It should read Article 22?

22 THE COURT: What paragraph is that?

23 MR. CASHMAN: In Paragraph IV, your Honor.

24 BY MR. CASHMAN:

25 Q. Flipping over to the next page, in Paragraph 13 there is a

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Brancher - direct

1 translation of Article 166. Do you see that, sir?

2 A. Yes.

3 Q. Is there another typographical error in the second  
4 sentence?

5 A. Yes, yes, and essential, and not E N.

6 Q. With those two corrections, sir, have you had a chance  
7 to -- you have had a chance to review your trial affidavit  
8 before you signed it. Is that correct?

9 A. Correct.

10 Q. Have you had a chance to review it since you signed it on  
11 May 27th?

12 A. Yes.

13 Q. With the two errors we corrected just a moment ago, do you  
14 believe your affidavit is true and correct to the best of your  
15 knowledge and and your understanding?

16 A. Yes.

17 Q. You signed this affidavit on May 27th. Is that correct?

18 A. Correct.

19 Q. Do you know, sir, whether that was the same date on which  
20 Mr. Medrado signed an affidavit in this case?

21 A. Yes.

22 Q. Since May 27th, have you had a chance to review the  
23 opinions that are set forth in Mr. Medrado's trial affidavit?

24 A. Yes.

25 Q. Did anything that you read, you have read in Mr. Medrado's

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Brancher - direct

1 affidavit change your opinions in any way?

2 A. No.

3 Q. Now, in the course of reviewing Mr. Medrado's trial  
4 affidavit, did you come across a discussion of the principles  
5 of venire contra factum proprium?

6 A. Yes.

7 Q. Is that, in fact, a principle of Brazilian law?

8 A. It is.

9 Q. Is it a concept you're familiar with, sir?

10 A. Yes, I am.

11 Q. Would you please briefly explain what that concept is.

12 A. It is a principle related to the good faith applicable to  
13 relationship between parties, meaning that the parties that  
14 participate in that transaction should not act on a  
15 contradictory basis because that is exactly what good faith is  
16 expected and that is the behavior that is expected, not to be  
17 contradictory.

18 Q. In connection with this case, and specifically in the  
19 discovery phase, did you prepare your own opinion that related  
20 to the principal of venire contra factum proprium?

21 A. Yes.

22 Q. I'll refer you to Defendant's Exhibit 18 which is placed  
23 before you.

24 A. Yes.

25 Q. And specifically Paragraph 28 of Defendant's Exhibit 18.

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Brancher - direct

1 A. Yes.

2 Q. Let me back up.

3 Is Defendant's Exhibit 18 your rebuttal expert report  
4 in this case, sir?

5 A. It is.

6 Q. It is dated March 15th, 2011?

7 A. March 15th, 2011.

8 Q. So focusing your attention now on Paragraph 28, does that  
9 paragraph and the subsequent photographs contain a fair  
10 statement of your opinion with respect to the applicability of  
11 the venire contra factum proprium principle?

12 A. Yes, and also in the case at hand.

13 Q. Again could you just briefly summarize for us what is your  
14 opinion with respect to the venire contra factum proprium  
15 opinion that applies to the facts of this case?

16 A. Basically it was a response to an argument developed by Mr.  
17 Medrado saying that the fact that Itamarati was denying the  
18 validity of the guaranty was something that would not be  
19 accepted because of the principle of venire contra factum  
20 proprium and because the acts seem to be contradictory.

21 From Paragraph 28 and on, I explain that my view of  
22 that principle and also why it is not applicable here because  
23 basically the approval of -- I am sorry -- the signature of a  
24 guaranty depends not only on the signature of the officer but  
25 the authorization of the board of directors, which means that

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Brancher - direct

1 the will of the company depends on both organs, and that could  
2 be the will of the officer but not the will of the entity  
3 itself.

4 What the board did is exactly what it is expected to  
5 do in the sense when they found out it was not authorized, that  
6 they denied the validity. This is not a contradictory  
7 behavior; this is just that they were playing their role of  
8 controlling the acts of the officers.

9 Q. Thank you.

10 Is that opinion that you just summarized that is set  
11 forth in Defendant's Exhibit 18, beginning at Paragraph 28, is  
12 that an opinion that you're offering in this case, sir?

13 A. Yes.

14 Q. And together with the matter set forth in your trial  
15 affidavit, does that constitute your expert opinion you're  
16 offering in this case?

17 A. Yes.

18 MR. CASHMAN: No further questions.

19 CROSS EXAMINATION

20 BY MR. RICE:

21 Q. Isn't this notion of a will of a board an entire fiction in  
22 this case, sir? Let me ask you a proper question.

23 Were you here in the courtroom this morning?

24 A. Yes.

25 Q. Did you hear the testimony of Ms. Tamer, the president of

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Brancher - cross

1 the board?

2 A. Yes.

3 Q. Did you hear the testimony of Mr. Possari, who has at least  
4 on paper served as secretary of the board?

5 A. Yes.

6 Q. Isn't it true, sir, you understand from that testimony that  
7 it is really Mr. Olivera who runs this company and dictates  
8 both from a management and from a board perspective what  
9 happens?

10 A. This is a conclusion that you are telling me, but this is  
11 not what I can understand from the documents that I analyze and  
12 even from what I heard today.

13 Q. Even based on what you heard today, you are basing your  
14 opinion on an assumption that the board of directors of USINAS  
15 Itamarati was a governing, operating real entity that  
16 deliberated on matters and acted as a check on management with  
17 respect to matters that were within the scope of its duties and  
18 responsibilities?

19 A. That's what the bylaws set forth. That was the resolutions  
20 of the board set forth and that was the business was run at  
21 that time.

22 Q. Well, I was with you until the last one. You said that is  
23 how the business was run at that time. You don't have, as you  
24 sit here as an expert, you certainly don't have any  
25 information -- let me back up -- you don't have any personal

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Brancher - cross

1 knowledge that the board ever met and deliberated on any  
2 matter, right?

3 A. Physically speaking, I don't have that information, but  
4 based on the minutes of the meetings, they deliberated and  
5 exercised that power, that authority as of the board.

6 Q. You're basing that on the same documents with Mr. Possari  
7 and counsel talked with Ms. Tamer, right, the formal documents?

8 A. The documents necessary for the board to express their  
9 will.

10 Q. Sitting here today, you don't, you have not reached the  
11 conclusion -- withdrawn -- do you have any doubt in your mind  
12 as you sit here today as to whether or not the board actually  
13 acted pursuant to its fiduciary duties in the management of  
14 this company?

15 A. Can you repeat the question.

16 Q. Sure. Sitting here today, you've got to have some  
17 question, sir, don't you, whether or not the board of USINAS  
18 Itamarati carried out responsibilities, don't you?

19 A. I am sorry, I don't think I am getting the scope of your  
20 question.

21 Q. I am trying to be simple. I will try to back up.

22 The members of the board of directors of a Brazilian  
23 company, even a closely-held company, they've got duties, don't  
24 they?

25 A. Yes.



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Brancher - cross

1 Q. Tell the court what are the duties of a director of a  
2 company like USINAS Itamarati?

3 A. I can't speak about the duties of any officer of the  
4 company, which means that --

5 Q. I don't mean to interrupt you.

6 I would like to deal with the duties of the directors  
7 of the company. Can you tell the court what the duties are of  
8 the members of the board of directors of USINAS Itamarati?

9 A. The authority of the board of directors is set forth in the  
10 bylaws and in the corporation law.

11 I can mention, for example, the controlling of  
12 management activity, the prior approval, the approval of  
13 certain acts, the approval of financial statements and so on.

14 Q. Let's talk about controlling of management activity. Do  
15 the directors of Itamarati -- withdrawn -- in 2008, did the  
16 directors, and 2007 -- did the directors of USINAS Itamarati  
17 have duties with respect to the control of the management of  
18 the company?

19 A. If the board was existing at that time, I answer yes.

20 Q. The board was existing at that time, right, that is your  
21 understanding?

22 A. Yes.

23 Q. Those duties are essentially fiduciary in nature, aren't  
24 they?

25 A. Legal obligations, of course. If it is a choice by the

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Brancher - cross

1 shareholders, it means a fiduciary duty as well.

2 Q. A part of that fiduciary duty is a duty of each of the  
3 members of the board of USINAS Itamarati to act in a diligent  
4 way?

5 A. Yes.

6 Q. As you sit here today and you listened to the testimony  
7 that preceded you, you have to admit you have some question in  
8 your mind whether, in fact, the members of this board of USINAS  
9 Itamarati exercised their fiduciary duties to control  
10 management?

11 A. I have no reason to doubt that.

12 THE COURT: Doubt what?

13 THE WITNESS: To doubt that they didn't exercise with  
14 their fiduciary duty. Was that a question?

15 BY MR. RICE:

16 Q. You're saying you have no reason to doubt that they  
17 exercised their Fiduciary duties?

18 A. I have no reason to doubt that they exercised their role  
19 with following their fiduciary duties.

20 THE COURT: Let's phrase it another way.

21 If I, as the fact-finder, conclude that this board  
22 abdicated its responsibilities and basically just allowed  
23 Mr. Olivera to run the company as he saw fit, what follows from  
24 that under Brazilian law?

25 Is a board resolution then still necessary?

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Brancher - cross

1 THE WITNESS: It is -- well, let me put it this way:  
2 As set forth by corporation law, there are some acts that  
3 depend on board resolution. So even if there is an officer or  
4 there is someone in the company that is the person that  
5 everybody counts on him, he needs to have the approval of the  
6 ones that are responsible and that are in charge of that role  
7 for approving certain acts. So surely you need to have the  
8 signature of the members of the board.

9 THE COURT: You're saying it is irrelevant under  
10 Brazilian law whether the board is functioning or whether the  
11 board is a sham? You're saying it doesn't matter?

12 THE WITNESS: No, it matters. I am sorry if I am  
13 being misunderstood. What I mean is that even if the board of  
14 directors do not meet regularly, if there is a board of  
15 directors, and as the corporation law set forth that there are  
16 certain acts that depend on the board authorization, it's  
17 mandatory to have the board approval for certain acts as set  
18 forth in the bylaws or in the legislation specifically  
19 regarding certain acts.

20 THE COURT: If the board never considers anything,  
21 they sign a piece of paper put in front of them, a  
22 hypothetical, if the board members sign whatever the president  
23 or the officer tells them to sign, nonetheless a resolution is  
24 required before a third party would be entitled to rely upon  
25 the authority of the officer? That is what you're saying?

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Brancher - cross

1 THE WITNESS: Yes, yes. Obviously, it depends on the  
2 factual circumstance.

3 THE COURT: Why does it depend on that? I thought you  
4 said yes?

5 THE WITNESS: Yes, that would be denied only in the  
6 court decision that a judge could understand on a different  
7 perspective, but on a daily basis, a normal basis, the way  
8 business is formalized, it is mandatory.

9 THE COURT: I am the judge, okay?

10 If I don't bind under Brazilian law, I want to know  
11 what authority I have under Brazilian law to conclude that the  
12 board resolution is irrelevant because the board functions as a  
13 rubber stamp to someone else, someone else is the alter ego of  
14 the controlling party. If that were the finding, then under  
15 Brazilian law, what does that mean with respect to actual  
16 authority?

17 THE WITNESS: I keep my understanding that to have the  
18 business on the safe side, on the way the legislation, the law  
19 sets forth is the to have the board authorization.

20 THE COURT: It is your view under Brazilian law, the  
21 third party proceeds at his peril, and even if the corporation  
22 acts in bad faith, that nonetheless, that still is a win for  
23 the corporation?

24 THE WITNESS: No. If it acts in bad faith, that is a  
25 different perspective.

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Brancher - cross

1 THE COURT: Would the abdication of the board of its  
2 responsibility to understand the business of the corporation  
3 constitute bad faith?

4 THE WITNESS: I wouldn't say so.

5 THE COURT: What would constitute bad faith?

6 THE WITNESS: Well, if you want to defraud, if you  
7 want to lead someone to error, if you deliberately want to  
8 prejudice the counterpart, that would be bad faith.

9 THE COURT: I have some other questions, but I don't  
10 want to hijack your examination.

11 BY MR. RICE:

12 Q. Let's stay with the bad faith thing.

13 What if the person, what if the court were to conclude  
14 that the person who, in fact, ran the company and knowingly  
15 entered into transactions and didn't get the formal board  
16 approval, is that the kind of action that could be bad faith as  
17 you've just mentioned?

18 A. I don't think so. I don't think necessarily so. I would  
19 say bad faith if the person deliberately wanted to damage the  
20 other party, this is an example of bad faith, but because he  
21 didn't get the information to the board, it doesn't mean  
22 necessarily bad faith.

23 Q. The principle you were talking about with Mr. Cashman again  
24 that I never get quite right, venire contra factum proprium,  
25 can you --

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Brancher - cross

1 A. Venire contra factum proprium.

2 Q. I still won't be able to say it.

3 That principle you're saying in this case it is not  
4 applicable because the board itself was still entitled to  
5 exercise rights that were left to it, right?

6 A. Right.

7 Q. And you also separately I think said in your testimony that  
8 there is, that there is a separation of powers idea, right, at  
9 work in Brazilian corporate entities, right?

10 A. That's the meaning of Article 42, meaning of Article 44 of  
11 the corporation law.

12 Q. That underlies a lot of your opinions, right, is really not  
13 letting the officers, even if they act in good faith, somehow  
14 deprive the board of directors of its ability to pass on  
15 transactions that fall within the scope of its authority,  
16 right?

17 A. Can you rephrase that? I am sorry.

18 Q. Sure. Underlying a lot of your opinion is this notion of  
19 separation of powers and checks and balances within a  
20 corporation like USINAS Itamarati, right?

21 A. Right.

22 Q. But it is your testimony to this Court even if those checks  
23 and balances on which you rely for your opinion don't exist  
24 because the board is not, you know, a legitimate operating  
25 entity, that nonetheless the failure to obtain board approval

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Brancher - cross

1 would render transactions like this --

2 A. I don't understand why it is not legitimate. It is duly  
3 formalized in the bylaws. Many times the company had board  
4 approvals. The members of the board were consulted and even if  
5 you consider as a family-owned business I heard that the  
6 chairman consulted with other parties, so it is a different  
7 instance of decision. So it is clear that there is a  
8 counterbalancing of management with the board of directors.

9 Q. That is your expert opinion based on everything you have  
10 heard today, there was, in fact, an effective counterbalancing  
11 between the board and management?

12 A. I don't see that. I just explained what I heard is that,  
13 for example, for example, Ms. Tamer consulted with other  
14 people, so it was a situation where she could think on a  
15 different perspective.

16 Q. I understand what you heard. Based on what you heard -- we  
17 have all heard the same testimony -- based on what you heard,  
18 your expert conclusion is that the board at Itamarati acted as  
19 effective counterbalance to management?

20 A. Yes.

21 Q. That is your opinion?

22 A. That is my opinion, okay?

23 Q. When did you get your law degree?

24 A. Law degree?

25 Q. Yes.

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Brancher - cross

1 A. 1996.

2 Q. You have never testified as an expert in any legal  
3 proceeding before, right?

4 A. As this one, no.

5 Q. I am sorry. Other than this one?

6 A. No. As I already explained in my deposition, to testify  
7 only in the U.S. In Brazil, we don't have this kind of witness  
8 or expert. We write expert opinions.

9 Q. Even in Brazil you never served as an expert in litigations  
10 on questions relating to the Brazilian corporate or civil  
11 statutes about which you're testifying today, right?

12 A. As an independent expert, no; as a lawyer, yes.

13 Q. You're telling us you were a litigator on these issues,  
14 right?

15 But in terms of acting as an expert in litigation,  
16 you've never anyplace -- Brazil, the United States or any place  
17 else in the world -- served as an independent expert in a  
18 litigation relating to matters pertaining to the Brazilian  
19 corporate law or the Brazilian civil law, right?

20 A. If you mean expert as an independent person that is  
21 contracted to write an opinion, no.

22 Q. I mean to exclude from it acting as a lawyer.

23 A. Okay, it is clear.

24 THE COURT: It is almost 1:00 o'clock. I want to ask  
25 a question and I think we'll break.



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Brancher - cross

1           If you have your affidavit there, Paragraph 7, you  
2 reference Article 142. It is in English, so this is a  
3 translation. The translation is: "The board of directors is  
4 empowered to authorize the transfer of fixed assets and the  
5 granting of guarantees and liabilities of third parties."

6           Is it your testimony that the word "empowered," at  
7 least what is translated into English as empowered to, actually  
8 means is required to?

9           THE WITNESS: I think, "has the authority to."

10          THE COURT: I have the authority to sentence people to  
11 sometimes 20 years in jail. That doesn't mean I am required to  
12 sentence them to 20 years in jail. That is my question. Does  
13 "empowered" mean that the board has the authority but can  
14 delegate that authority to someone else?

15          Or does it mean that they must be consulted, they must  
16 pass a resolution before a guaranty of liability, guaranty of  
17 liability of third parties can be granted?

18          THE WITNESS: The meaning of the article is that any  
19 of these acts needs to have the board approval for their  
20 validity.

21          THE COURT: That is based on the language or that is  
22 based on something else?

23          THE WITNESS: It is based on the language which means  
24 that it is upon the board of directors to approve, for example,  
25 Item 8, unless the bylaws provide otherwise, the authorization

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Brancher - cross

1 of the transfer of fixed assets.

2 THE COURT: Well, the board of directors is empowered  
3 unless the bylaws provide otherwise to authorize the granting  
4 of guarantees. It is not clear to me from the language at  
5 least as translated that "empowered" means "is required to,"  
6 but that is your testimony?

7 THE WITNESS: Yeah, I would say that the best  
8 translation, hearing from the best translation would be, "has  
9 the authority to," meaning to me it is mandatory to have their  
10 approval. That is the way the Article 142 is interpreted.

11 THE COURT: All right. Let's stop there. We'll pick  
12 up tomorrow at 9:00 o'clock. Can you be here tomorrow at 9:00?

13 THE WITNESS: Yes.

14 THE COURT: Thank you very much. I appreciate it.  
15 Anything we should cover before we break?

16 MR. RICE: No, your Honor. If we do finish tomorrow,  
17 Thursday, it is a question of will your Honor like closings?  
18 Do you think they're tomorrow or Monday? Today is Wednesday.

19 THE COURT: Today is Wednesday. We are not going to  
20 sit Friday because Friday is may calendar day. I have no idea  
21 how long the witnesses are likely go tomorrow.

22 MR. RICE: I don't think they're going to be that long  
23 tomorrow. Yes, your Honor, we have Mr. Jhamb. Can we put him  
24 on first in the morning? We promised. He is a non-party and  
25 we promised him he could start, we could interrupt and start

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Brancher - cross

1 him, and the defendants have agreed to that previously.

2 THE COURT: That is all right with you?

3 MR. WERDER: We did agree with that.

4 THE COURT: You don't think he is very long?

5 MR. RICE: No.

6 THE COURT: Be be here at 9:00 o'clock anyway, but you  
7 won't be first. Your question is whether you should close  
8 tomorrow?

9 MR. RICE: I am hoping the answer is Monday.

10 MR. WERDER: I have another trial to be Norfolk. I  
11 can move that if it is inconvenient for the court.

12 THE COURT: I would like to have time to review the  
13 transcripts. I am getting them sort of --

14 MR. WERDER: Monday is fine.

15 THE COURT: Monday is my preference.

16 (Court adjourned until Thursday, June 23, 2010, at  
17 9:00 o'clock a.m.)

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